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England's War Burdens. The financial costs imposed upon Great Britain by the European war during the past five months already exceed those of the first three years of our Civil War. England has now 2,000,000 men in arms, mostly drawn from civil life, for the standing army at the outset was not large. The London *Statist* on January 2 estimated the total war expenditures "on supply," to March 31, 1915, at $2,476,440,000, an increase over the fiscal year of 1914 of $1,675,590,000. England's ability to finance war on such a vast scale was evidently due to the advances and mobility of credits of the Bank of England; to its powers of recuperatiou through drawing gold payments from other countries. It was the perfection of a mechanism of banking exchange developed through more than two centuries of continuous progress of utility and accumulation of profits and surplus. Without that vast engine of credit, the British government would have been unable to mobilize its forces in time to avert the destruction of France, perhaps the invasion of its own coasts.

English "Greenbacks." The English government has been forced by the shock to domestic credit, it is true, to issue $357,845,925 in legal tender notes. But this was forced by the conditions of moratorium and the vacuum left by the sudden flight of gold during the "war scare." The notes were used through the Bank in advances to joint stock banks whose assets were temporarily not liquid because of the moratorium. Unlike our own greenback issues, the British notes were fortified by a redemption account and retirement as rapidly as presented for redemption. The outstanding notes amounted on January 1 to less than $193,000,000. Against the latter, the Bank holds gold coin and bullion amounting to $92,500,000 and securities of $49,617,730, a value of $142,117,730; about 75 per cent of the notes and in gold alone more than 50 per cent. The circulation remains gold in value where our currency in 1863 fell in purchasing power to 39 cents on the dollar of greenbacks. The Bank redeems its notes in gold, except for export purposes when the buyer must pay the market price for gold or take exchange, also at market rates.

Both the costly issues of legal tenders and the enormous losses in

the London "free gold market" in July were avoidable; were due generally to disregard by bankers and members of Parliament of the warnings in every weekly number of the *Statist* for months before the assassination of the Archduke Ferdinand precipitated Armageddon.

Unimpaired British Capital. The *Statist* believes that Great Britain will not need to draw upon fixed capital invested in enterprises in order to finance its war expenditures; that the wealth and incomes of the country have greatly increased over previous computations. Tables of British subscriptions on new securities offered during the calendar year of 1914 apparently support this view and furnish an impressive illustration of the power of bank credits, unfettered by government restrictions, to build up the resources and wealth of the people to a point where predominance as a world power does not depend upon enormous standing armies. Great Britain, with a population of 45,000,000, subscribed during 1914 more than $2,600,000,000 cash to new securities. British investments at home were $1,879,357,490; in the colonies $428,000,000, and in foreign countries $350,000,000. Their investments in English, Indian and colonial bonds alone totaled $1,014,309,415. So great is the annual return of such investments abroad that the nation was able also to purchase on balance for home consumption nearly three billion dollars worth of colonial and foreign goods. It was an exhibition of financial energy and confidence in the future that should shame the calamity howlers in the United States.

Holden's Warning. Sir Edward Holden broke the traditions of joint stock banks this month to include in the report of the great London City and Midland Bank a separate item of gold-holding of sterling equivalent to $40,000,000. All England applauded his foresight and suggestions for financial "preparedness," which were ignored by Parliament last year. He made to the stockholders on January 23, 1914, a remarkable analysis of the lowering financial skies and the scramble for gold of continental banks. He scored as its weak spot the separation, in the charter of the Bank of England of its currency and banking departments, which prevented in emergency of losses of gold the support of true banking principles of currency. He showed the amount of hoarding of gold in each country and the raids on the "free gold market" of London which had reduced the stock of the Bank to less than $175,000,000 in spite of its low rates for exchange.

He called attention to the methods by which Havestein prevented exports of gold from Germany to pay her debts, while demanding payment in gold for exports of merchandise, which added to the gold in the Reichsbank during 1913 over $100,000,000, and to the Spanau war chest $15,000,000; to the absorption by Russian, Austrian

and French central banks of over $200,000,000 gold; his text to urge remedies to shut off the "free gold market," and keep some of it for home necessities.

Sir Edward pointed out that the British postal savings deposits were without cash reserves and a sudden fright of depositors might bankrupt the government; a scare which occurred and forced the resort to legal tender notes in July last. He urged upon the joint stock banks the importance of building up gold stocks and not depend upon the great bank hampered by losses of the metal. He called for public reports of gold in joint stock banks to furnish assurance to their depositors and gave due notice that if his advice was not heeded, the London City and Midland would certainly publish its gold holdings at the end of the year. This promise was fulfilled to the letter.

Sinews of War. Sir Edward Holden startled the routine bankers by his revelation that some joint stock banks had accumulated gold coin and bullion and were prepared and able to send into the Bank $100,000,000 in gold and $200,000,000 of unquestionable securities; provided the law of its charter were so changed that the Bank was given power to issue against such gold and securities their par of $300,000,000 in emergency currency; that if necessary the amounts named could be doubled. He pointed out that the new Federal Reserve Act would reduce the required reserves of American banks and it was an opportunity of English banks to replenish without injury to the United States their stocks of gold depleted by the continental raids on the London market. But his advice was unheeded until the shock of war came and the panic which left only the resort to legal tenders, issued to a much greater amount than he would have provided without cost to the governmnt; the moratorium which upset the world's exchanges, and the frantic efforts to compel other countries to pay debts to English merchants in gold without regard to English obligations. It was the penalty of refusal to support true banking principles of currency, for the consumer must pay the costs and fiat money is a tax upon all the people.

Agricultural Income. The United States has no war. Its population is more that double that of Great Britain. The money in circulation is $35.50 per capita. The country has diversified industries and is able to produce nearly everything that is imported. The crops of 1914 amounted in value to over six billion dollars, including meat products to over ten billions; all of it except cotton, marketed at the highest level of prices recorded. In this agricultural prosperity, we recall the saying of the late J. P. Morgan in 1895, that "the man who is a 'bear' on the future of this country, would go broke." Yet manufacturing capital apparently

lacks the British initiative of pluck and confidence to start industry. Meantime financial writers speculate upon the substitution of New York for London as the money center of the world and hail the import of a few millions in gold from China as a development of "dollar exchange," when it merely shows that a single banking institution is managed with ability to handle to advantage foreign exchange.

Business Foresight. Undoubtedly, New York sometime will become a formidable competitor of London in foreign exchange operations; that cannot occur, however, until we can find a way to make gold exporters pay the market price of gold intended for export. Temporarily the warring nations must seek accommodations here in money and supplies. Incidentally, our products will be in demand and our bankers will be able to profit by fiscal agencies of foreign countries and operations in foreign exchange, although hampered by the Federal Reserve Act. But such profits will be available only, and until the bank of England shall become able to resume its full powers of regulation and profit from the exchanges of this and other countries and the many dependencies of England in all parts of the world. Thus Russia is obliged to make purchases here, because England and France cannot supply her wants at the time. The arrangements for acceptance by a group of bankers headed by J. P. Morgan & Co., up to $25,000,000, provide for purchases of supplies for export to Russia. The credit must be taken up in thirty days and when so taken up Russia will draw ninety days' bills paying 5 per cent. to the participating banks; a usual transaction in Europe but new in American banking. Such acceptances would be eligible for rediscount at 4½ per cent. or if permitted by the Board, the Reserve Banks may invest in the acceptances.

Idle Reserve Money. So far there has been no opportunity for displaying the benefits of the Reserve System. The purpose of the scheme was to provide, in emergency, for the requirements of member banks through rediscounts of their unmatured commercial paper, to furnish the member banks with cash to make advances to invested capital. There is no unusual demand for money at the banks, hence the latter do not need money nor rediscounts of commercial paper. The low rates of the Reserve banks merely indicate the conditions of trade for the moment. The rates during the month declined from 5½ and 6 per cent for 30 and 60 day paper to 4½ and 5½ per cent respectively. San Francisco was permtted to experiment with a 4 per cent rate. The gold holdings and discounts of Reserve banks did not vary half a million each. The outstanding Reserve notes diminished to $1,854,000. The Reserve banks returned to their reserve agents $12,000,000 in coin certificates to retire an

equal amount of Reserve notes, for which there is no call. But this is temporary. High rates and commercial activity is liable to develop with any turn of the tide of war, or increase of industrial operations.

BANKING LAW.

Deposit Where Bank Insolvent. It is an act of fraud for a bank to receive money or checks from a depositor at a time when the bank is insolvent and the fact of the insolvency is known to the officers. The authorities are unanimous on this proposition of the law. The rule applies not only in the case where an individual deposited checks in a bank, but also in the case where one bank, being the owner of certain checks, sends them to a correspondent bank for collection. In either case, if the bank to which the checks are delivered for collection is insolvent at the time to the knowledge of its officers, it is guilty of fraud, and, because of that fact, the depositor upon discovering the state of affairs, may subsequently rescind the transaction. The result is that where a bank, being insolvent within the knowledge of its officers, accepts checks from a depositor for collection, the depositor is entitled, upon the failure of the bank, to reclaim the checks, or their proceeds, if he can identify them in the hands of the receiver. In the ordinary case, that is, in a case where the collecting bank becomes insolvent and it does not appear that the bank was insolvent at the time the deposit was made, or if it were insolvent, that its officers had knowledge of such insolvency, the title to checks indorsed in blank and deposited in the usual manner would pass to the bank, and the depositor would not be entitled to recover the entire amount of his deposit upon the failure of the bank, but would have the right merely to share in the general assets of the bank along with the other creditors.

In a Tennessee decision, published in this issue on page 17, a corporation deposited three checks to its credit in a bank as cash items, the company having the right to check against the credit thus given. After forwarding the checks the bank closed its doors, and it appeared that the bank was hopelessly insolvent at the time the deposit was made and that the officers of the bank were aware of the fact. The company had payment of the checks stopped, but the proceeds were subsequently paid over to the receiver under an agreement saving the rights of the interested parties until the question of ownership of the fund should be judicially determined. It was held that the proceeds of the checks in the hands of the receiver constituted a trust fund for the depositor and that the depositor was entitled to the full amount collected.

The court stated the governing rule in the following words: "That the reception of the checks on deposit by the Knoxville Bank, when it

was in a condition of hopeless insolvency, known to its managing officers, was a transaction rescindable for fraud, and that the depositor may recover the checks if not dissipated or so mixed with other funds that they cannot be identified or traced, is so well settled by our cases as not to require citation." In the circumstances which appeared in this case, there was no difficulty in the matter of tracing the deposited items, for the identical checks in question came into the hands of the receiver.

In cases where the collection is made and the proceeds received by the insolvent bank before its failure, there is a difference of opinion as to the rights of the depositor. According to some of the decisions, the depositor cannot recover the proceeds of the collection unless he can identify the particular money which was received by the bank in payment of his checks; in other words, if the collecting bank mingles the proceeds of the collection with other funds of its own so that the depositor is unable to trace or identify the particular money which represents his checks, the depositor cannot claim the entire amount of his checks as a trust fund but may come in only as a general creditor. This rule, however, has been developed in some jurisdictions and the depositor is there allowed to recover in full, provided he shows that the proceeds of his checks reached the hands of the receiver. In these jurisdictions the fact that the depositor cannot point to any particular coin or bills as having been received for the checks deposited by him is immaterial; if he can show that the proceeds of his checks increased the fund in the hands of the receiver he is entitled to impress a trust upon the fund to the extent of the amount of his deposit.

Note Given in Gambling Transaction.

The law looks with scant favor upon gambling or wagering contracts and it has always been the policy of the courts to refuse to aid either party to a contract of this kind. Many of the states have adopted statutes affirmatively declaring such contracts to be void. In Virginia it is provided by statute that a contract for money loaned or advanced at the time of any gambling or wagering, to be used for the purpose of gambling or wagering, is void where the person loaning or advancing the money is aware at the time of the purpose for which the money is to be used. This statute was construed in a recent decision, Citizens' National Bank v. McDonald, on page 23 of this number. The plaintiff bank, being the holder of a note for $1,200.00 made by the defendant, brought suit thereon and was met by the defense that the money was borrowed by the defendant for the purpose of keeping up margins on a stock gambling transaction and that the money was thereafter used for that purpose. The defendant also alleged that this fact was known to a party who had signed the note as accommodation indorser, but he did not allege, nor was it made

to appear, that the plaintiff bank had any notice of the purpose which actuated the defendant in negotiating the loan. Under these circumstances it was held that the bank was entitled to recover on the note. If at the time of advancing the money the bank had known that the defendant wanted the money to use in gambling on the price of stocks, it would have been clearly within the terms of the statute and not entitled to recover on the note. But the bank was under no duty to conduct an investigation for the purpose of ascertaining the defendant's intended disposition of the funds. "It was the business of the bank to lend money," the court stated in its opinion, "and it was under no obligation to inquire of its borrower what he wanted the money for; nor is it to be affected by any use which its borrower chose to make of the money. * * The burden rested upon the borrower to prove that he was engaged in a stock gambling transaction and that the bank knew the unlawful use to which the money was to be applied."

Presentment of Demand Note.

When does a note payable on demand mature? Within what time must it be presented for payment in order to charge an indorser? The Negotiable Instruments Law says that a note payable on demand must be presented within a reasonable time after its issue, but this leaves open the question as to what is a reasonable time. And this is a question which has received many different answers. The Kentucky answer may be found in the case of Frazee v. Phoenix National Bank, on page 19 of this number, where it is held that a note payable on demand must be presented for payment within four months after its issue and that, if it is not presented within such time, the indorsers are discharged. The court fixes upon the period of four months because that is the customary period for which commercial paper is allowed to run by the Kentucky banks. "It is a matter of common knowledge" said the court, "that in the banks of central Kentucky, commercial paper is rarely permitted to run longer than four months without renewal; and it may be said to be a custom or usage of trade that such paper is ordinarily payable within that time."

In Massachusetts it has been held that demand notes thould be presented for payment within sixty days after issue and that in default of such presentment, the holder loses recourse against the indorsers. Merritt v. Jackson, 182 Mass. 69, 62 N. E. Rep. 987, 29 B. L. J. 125. The conclusion of the court in this case was also based upon custom. It appeared that for nearly sixty years prior to the adoption of the Negotiable Instruments Law in Massachusetts, there was in force in Massachusetts a statute requiring the presentment of demand paper within sixty days. Although this statute was repealed by the Negotiable Instruments Law, the custom which was established under it still survived, and the court held that, in the absence of any evidence es-

tablishing a different custom or usage, a demand note not presented within sixty days after its issue was overdue.

In the presentment of demand paper for payment banks have a real difficulty to face. In many jurisdictions the question has never come up for decision by the courts. In other jurisdictions the decisions do not give a definite period within which presentment must be made as do the courts of Kentucky and Massachusetts, but are to the effect that a presentment two years after a note is issued is insufficient or that a presentment within two weeks is within a proper time, and are therefore of little value to the banker who wants to know exactly how long he may hold a demand note before presenting it without discharging the indorsers on the note. The banker may avoid questions of this kind by taking notes in such form that they will be payable on or before a certain date; this gives the banker the privilege of demanding payment at any time just as in a demand note and precludes any possibility of question as to the legality of the presentment, so long as payment is demanded within the time limited by the instrument itself.

Contract to Sell Stock by National Bank.

A national bank, like any other banking institution, is limited as to the lines of commercial enterprise in which it may engage by the terms and the conditions of the statute under which it is created. One of the things which a national bank is not permitted to do, as appears in the case of Hotchkin v. Third National Bank, recently decided by the Supreme Judicial Court of Massachusetts, and published herein on page 33, is to enter into an agreement to sell shares of stock in a corporation which are not in its possession, or which have not come into its possession in the ordinary course of its business. A national bank may loan money and it may secure itself by taking as pledgee shares of corporate stock. If the loan is not paid, it may enforce its rights as pledgee and if necessary for its protection, it may become the owner of the shares and thus become a stockholder of the company by which the shares are issued. But a national bank has no power to engage in the business of buying and selling stocks as a source of revenue or profit, which, as the court stated, "would subject the capital contributed by the stockholders to the hazards of speculation independently of the ordinary risks of banking; the power to engage in such an enterprise, however attractive it may be, is not expressly given by the statute nor can it be implied as incidental to the business of banking which it was chartered to transact."

In the case above referred to, the bank was sued for a breach of contract, in that it failed to deliver to the plaintiff certain shares of stock in accordance with the terms of an agreement entered into between the parties. The bank answered that if any such contract had been made, it was entirely beyond the powers of the bank, and that,

therefore, the bank was not liable to the plaintiff. The court supported the bank in this contention and held that the plaintiff could not enforce the contract against the bank, either by a suit for specific performance or in an action for damages.

Note Made While Intoxicated.

It is said that there is a special Providence the function of which is, to look after the welfare of those who have indulged too freely in alcoholic stimulants. Whether this be so or not, it is a fact that the courts exhibit a certain leniency toward those whose faculties have become clouded as a result of over-indulgence; for it is the law, that a man may repudiate a contract entered into at a time when he was in such a state of intoxication as not to be able to comprehend its terms. It should be mentioned that the courts, in such cases, are not entirely actuated by feelings of tenderness for the guilty party, but are merely applying the rule that in the formation of a valid contract, there must be a meeting of the minds of the two parties.

Contracts entered into under the circumstances indicated are however not void; they are voidable only, and may be ratified by the intoxicated party upon his becoming sufficiently sober to comprehend the nature of the agreement into which he entered. This is what happened in the case of Matz v. Martinson, a Minnesota decision published in this number on page 24. The action was on a note made by the defendant, and the defense interposed was that the defendant was so drunk at the time when he signed the note as to be incapable of entering into a contract; but it appeared that the defendant not only failed to repudiate the note but subsequently made two payments of $50.00 each upon it. It was accordingly held that he had ratified and affirmed the instrument and that he was liable to the plaintiff.

Usury As a Defense to Action On Note.

The question whether usury is available as a defense in an action against the maker of a note brought by a holder in due course, is one on which the authorities in the State of New York conflict. In the BANKING LAW JOURNAL for February, 1910, at page 154, we published the case of Klar v. Kostuik, decided by the Appellate Term of the New York Supreme Court, in which it was held that a bona fide holder of a promissory note was entitled to recover thereon against the maker or indorser, notwithstanding the fact that the note was usurious in its inception. This conclusion was reached under Section 96 of the Negotiable Instruments Law which provides that a holder in due course holds the instrument free from any defect of title of prior parties and free from any defenses available to prior parties among themselves. In the JOURNAL for August, 1913, at page 645, appears case of Crusins

v. Siegman, decided by New York Supreme Court, Special Term, in which it was held that a promissory note, void for usury, cannot be enforced even by a holder in due course. In this case the court was of the opinion that Section 96 of the Negotiable Instruments Law would not permit a recovery upon a note void in its inception, even though the action should be brought by a holder in due course.

In this issue, at page 37, is the case of Emanuel v. Misicki, another Appellate Term decision following the previous Appellate Term decision, Klar v. Kostuik, referred to above, and holding that usury is not a good defense in an action against the maker of a note by one who is a holder in due course of the instrument. "While the decisions are not in accord upon the question of the availability of such a defense," it wae stated in the opinion, "when urged against the holder of a note in due course, we feel bound to follow the Appellate Term decision and to hold that the refusal of the trial judge to charge the jury as requested by the plaintiff's attorney, that this defense was not available to the defendant herein as against the plaintiff was error."

Different jurisdictions will always hold conflicting views on questions of this kind, but there is no apparent reason why there should be a conflict among the decisions of different courts in one particular state. It is to be hoped that the question, whether usury is a good defense against a holder in due course, may be settled once and for all in New York State by a decision of the Court of Appeals or by a statutory enactment.

SUPPLEMENT TO THE DIGEST.

It will no doubt be gratifying to our subscribers to learn that we have issued a supplement to the BANKING LAW JOURNAL Digest, published in 1912, which contained all of the decisions that appeared in the JOURNAL from January 1900 to July 1912.

The particular value of the Digest lies in the great amount of legal information comprised in the 2400 banking decisions it contains and the simplicity of arrangement, which makes it exceptionally valuable and convenient for quick reference.

The Supplement just published contains about 1000 new decisions and brings the original Digest down to the date of January 1st, 1915. The fact that the Supplement is arranged in accordance with the same plan that was used in the original Digest makes it possible to refer quickly from one to the other and obtain the latest judicial ruling on questions of banking law that may arise.

While the Supplement is a companion book to the original Digest, it is a complete work in itself and is a thorough index to the important banking decisions which have been handed down by the highest courts of this country during the past two years and a half, The price of the Supplement is $1.00 per copy but it will be sent to our JOURNAL subscribers for 50c. per copy.

THE NEGOTIABLE INSTRUMENTS LAW

A SERIES OF PRACTICAL ARTICLES RELATIVE TO THE LAW OF NEGOTIABLE INSTRUMENTS,

CITING RECENT AND IMPORTANT DECISIONS.

BY JOHN EDSON BRADY, OF THE NEW YORK BAR.

(These articles were commenced in the July, 1909, issue.)

XV. ACCEPTANCE AND PAYMENT FOR HONOR.

§ 1. **Acceptance for Honor.**

Where a bill of exchange has been protested for nonacceptance any person not a party may, with the consent of the holder, accept the bill supra protest for honor. The acceptance may be for part or all of the sum for which the bill is drawn, and there may be several acceptances for the honor of different parties. The acceptance must be in writing and signed, and must indicate that it is an acceptance for honor. If it does not state for whose honor it is made, it is deemed to be for the honor of the drawer. The acceptor for honor is liable to the holder and to all parties subsequent to the one for whose honor he accepted. He is not liable on his acceptance until the bill has been presented and protested for non-payment and notice of dishonor given to him. The bill must be promptly presented for payment to the acceptor for honor, unless the delay in making presentment is excused under section 141 of the statute. If the bill is dishonored by the acceptor for honor, it must be protested for nonpayment by him.

§ 1. **Acceptance for Honor.**—The term, "acceptance for honor," refers to the acceptance of a bill by one who is a stranger to the instrument, after the bill has been presented for acceptance to the drawee and he has refused to accept. However popular this form of acceptance may have been in earlier days, it is very infrequently met with at the present time; in fact, the current decisions of the courts of this country are almost devoid of comment upon this kind of acceptance. However, a series of articles on the Negotiable Instruments Law would not be complete without reference to the provisions of the statute which regulate acceptances of this character.

The law of acceptances for honor is to be found in the following provisions of the Negotiable Instruments Law:

§ 280. When bill may be accepted for honor.—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

§ 281. Acceptance for honor; how made.—An acceptance for honor

supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

§ 282. When deemed to be an acceptance for honor of the drawer. —Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

§ 283. Liability of acceptor for honor.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

§ 284. Agreement of acceptor for honor.—The acceptor for honor, by such acceptance, engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

§ 285. Maturity of bill payable after sight, accepted for honor.— Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

§ 286. Protest of bill accepted for honor, et cetera.—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

§ 287. Presentment for payment to acceptor for honor; how made. —Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified, in section one hundred and seventy-five.

§ 288. When delay in making presentment is excused.—The provisions of section one hundred and forty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

§ 289. Dishonor of bill by acceptor for honor.—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

The following quotations taken from Mr. Daniel's excellent work on Negotiable Instruments, throw considerable light upon the subject of acceptance for honor. If the statements made by Mr. Daniels do not conform in all particulars to the provisions of the Negotiable struments Law, it is because the statute has made certain minor changes in the law as it existed prior to the adoption of the statute.

§ 521. There is a peculiar kind of acceptance called acceptance for honor, or supra protest. This most frequently happens when the original drawee refuses to accept the bill, in which case a stranger may accept the bill for the honor of some one of the parties thereto, which acceptance will inure to the benefit of all parties subsequent to him for whose honor it was accepted.

§ 522. As to circumstances under which there may be such an acceptance, it is only allowable when acceptance by the drawee has been refused, and when the bill has been protested, and hence it is called acceptance supra protest.

The reason assigned for this is that the drawer and indorsers have a right to say that the bill was not primarily drawn on the acceptor for honor, and the only proper proof of the refusal of the original drawee is by protest, that being the known instrument, by the custom of merchants, to establish the facts.

§ 523. As to the method of acceptance for honor, it is in this wise:

The acceptor for honor, or supra protest, appears before a notary public, witnesses and declares that he accepts such protested bill in honor of the drawer or indorser, as the case may be, and that he will pay it at the appointed time. And then he subscribes his name to the words, "accepted supra protest for the honor of A. B.;" or, as is more usual, "Accepts, S. P."

Sometimes the form used is: "Accepted, under protest, for honor of Messrs. ———, and will be paid for their account, if regularly protested and refused when due." And the acceptor supra protest must be particular to state for whose honor he accepts.

It is the duty of the acceptor supra protest, as soon as he has made the acceptance, to notify the fact to the party for whose honor it is done, and the party paying the bill under protest for honor must give reasonable notice to the person for whose honor he pays, otherwise he will not be bound to refund.

§ 524. As to who may be acceptor for honor.—A stranger may undoubtedly accept for honor; and by the word "stranger" in this connection is meant any third person not a party to the bill. It seems that acceptance for honor may also be made by the drawee, who, if he does not choose to accept the bill drawn generally on account of the person in whose favor, or on whose account he is advised it is drawn, immediately accepts it for the honor of the drawer, or of the indorsers, or of all or any of them.

But if the drawee were bound in good faith to accept the bill, he cannot change his relations to the parties, and accept it supra protest for the honor of an indorser; he must either accept or refuse.

§ 526. As to the rights of an acceptor for honor.—By an acceptance for honor, the acceptor has recourse against the party for whose honor he accepts, and all parties whom the latter would have recourse against, and none others. But the acceptor for the honor of the drawer can-

not recover against him without proof of a presentment for acceptance or payment, and refusal and notice to the drawer.

If he accepts for the honor of the drawer only, he will in general have no recourse against the indorsers; and if for the honor of an indorser, he will have no recourse against a subsequent indorser—the exception arising in cases where the person for whose honor he accepts the bill might have recourse against either, as when he is an accommodation drawer or indorser.

§ 527. As to liability of the acceptor for honor.—The acceptance for honor or supra protest, is not an absolute engagement like an ordinary acceptance for value. It is a conditional engagement, and to render it absolute, the performance of several acts as conditions precedent are essential. Such an acceptance, says Lord Tenterden, C.J., "is to be considered not as absolutely such, but in the nature of a conditional acceptance. It is equivalent to saying to the holder of the bill, 'keep this bill, don't return it, and when the time arises at which it ought to be paid, if it be not paid by the party on whom it was originally drawn, come to me and and you shall have your money.'" The nature of such an acceptor's undertaking is more analogous to that of an indorser than that of an ordinary acceptor, and to render him absolutely liable it is necessary:

First, to present the bill at maturity to the original drawee, notwithstanding his prior refusal, because between the time of such refusal and the time of maturity, effects may have reached the drawee, out of which he might, if the bill were again presented, pay it; and the drawer and other parties are entitled to the chance of any benefit which might arise from such second demand. And if it were not made (except in the case of a bill made payable at a place not being the residence of the drawee), the drawer and indorsers would be discharged; and as the acceptor supra protest would thereby lose recourse against them, he is also discharged.

Second, upon refusal by the original drawee to pay the bill when it is presented at maturity, it must be again protested for non-payment, and such protest and presentment must be alleged in the declaration against the acceptor supra protest.

And third, it is then necessary to present the bill in due time to the acceptor supra protest.

If on such presentment the acceptor supra protest refuses to pay, there must be another formal protest, stating the presentment for payment to the drawee, the protest for his nonpayment, the presentment of the bill and acceptance to the acceptor supra protest, and the demand of payment of him, and the protest of his nonpayment; and notice thereof must be forthwith forwarded to the drawer and indorsers.

§ 529. Holder not bound to take acceptance for honor.—The holder is in no case bound to take an acceptance for honor; but if he receives it, and it is for the honor of a particular party, he cannot sue such

party until the maturity of the bill, and its dishonor by the acceptor supra protest. And if the acceptance is for the honor of all the parties to the bill, he cannot sue any of them until it has matured and been dishonored.

But there seems to be no reason why the holder may not sue prior parties, when the acceptance is for the honor of a particular party, after giving them due notice.

In Konig v. Rayard, 1 Peters (U. S.) 250, it was held that an acceptor supra protest for the honor of the indorser was entitled on paying the bill to recover from the indorser though he accepted at the instance of the drawee as his agent, it appearing that the indorser was not damaged by this indirect method of proceeding on the part of the drawee. The bill was payable to the order of the defendants and after being indorsed by them was transmitted to their correspondents in London for the purpose of having it accepted by the drawees, N. J., and R. Van Staphorst. The drawee refused to accept for the reason that the defendant had no right to draw upon them. They were advised by counsel not to interpose their own names for the honor of the defendant and at their solicitation the bill was accepted for honor by the plaintiffs. Without delay the drawees sent the following letter to the defendants in explanation of the course they had adopted. "In this predicament, we applied to our friends, Wm. Konig & Co., who had the said bill in hand, informed them of the whole case, and requested these gentlemen under our guarantee, to intervene on behalf of your signature, with acceptance and payment of the above bill; which favor these gentlemen have not refused to us; so that, without our prejudice, and completely without yours, we have duly protected your interest." In the opinion it was said: "The plaintiff in this case must be considered as the agent of N. and J. and R. Van Staphorst, and as having paid the bill at their instance. All parties concur in stating this fact. The Van Staphorsts adopted this circuitous course, instead of interposing directly in their own names, under the advice of counsel. They, however, immediately stated the transaction in its genuine colors, to the defendants. It is impossible to doubt that a person may thus intervene, through an agent, if it be his will to do so. The suspicion which might be excited by proceeding, unnecessarily, in this circuitous manner, cannot affect a transaction, which was immediately communicated, with all its circumstances. to the persons in whose behalf the intervention had been made; unless those persons were exposed to some inconvenience, to which they would not have been exposed had the interposition been direct. This is the case in the present instance, since it cannot be doubted that the defendants might have availed themselves of every defense in this action of which they could have availed themselves had N. and J. and R. Van Staphorst been plaintiffs. The case shows clearly that the bill was not drawn on funds, and that the drawees were not bound to accept or pay it. No reason,

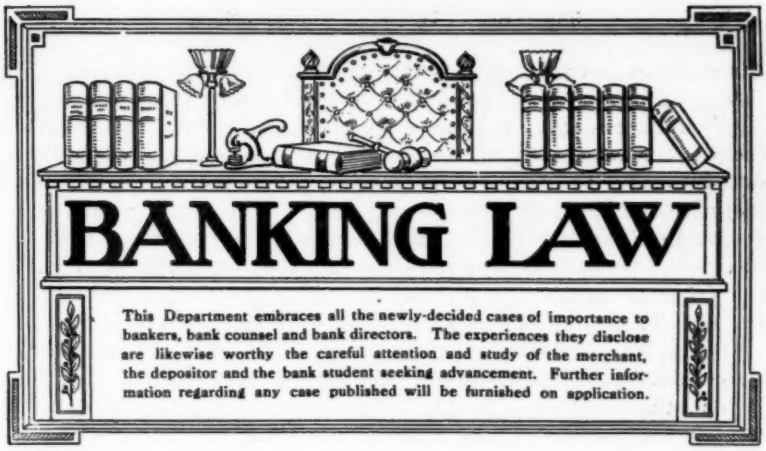
therefore, can be assigned why the person who has made himself the holder of the bill, by accepting and paying it under protest, should not recover its amount from the drawer and indorsers."

Bills of exchange may be paid for honor as well as accepted for honor. It is only after a bill has been protested for nonpayment that it may be paid for honor. When a bill has been so protested, any person may intervene and pay it supra protest for the honor of any party liable on the instrument, or for the honor of the person for whose account it was drawn. In order to operate as a payment, for honor and not as a mere voluntary payment, the payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it. Upon paying the bill for honor, the person making the payment assumes all the rights and duties of the holder as regards the party for whose honor the payment was made, and all parties liable to him, and all those parties to the bill, subsequent to the party for whose honor the payment was made, are discharged. When the holder of a dishonored bill refuses a preferred payment for honor, he loses his right of recourse against any party who would have been discharged by such payment.

"There is a peculiar kind of payment," says Mr. Daniel, "sometimes made after protest, and which is called, accordingly, payment supra protest. It is a general principle of the common law, that a stranger cannot voluntarily, and without the request of another, pay his debt and acquire a right to reimbursement. But an exception is made in respect to bills of exchange, and for the benefit of the trade, which is not extended even to negotiable notes. When the bill has been protested for nonpayment, and not before, a stranger may pay it for the honor of the drawer, or acceptor (if it has been accepted), or of any indorser, or he may pay it for the honor of all the parties—for honor generally, as such a payment is termed. And such a payment does not, like a simple payment by the original drawee, operate as a satisfaction of the bill, but itself transfers the holder's rights to the party paying, unless the party paying limits and narrows them. If the payment is made for the honor of a particular indorser, the party paying may sue such indorser, and all parties prior to him whom he could have resorted to, but not subsequent indorsers, for it stands like a payment made at the request of the indorser, for whose honor it is made, and the payor supra protest narrows and limits his right to recover against them only." Daniel on Negotiable Instruments, § 1254.

The payment of bills of exchange for honor is regulated by sections 300 to 306, inclusive, of the Negotiable Instruments Law. These sections will be taken up in the next article of this series.

(To be Continued.)


BANKING LAW
This Department embraces all the newly-decided cases of importance to bankers, bank counsel and bank directors. The experiences they disclose are likewise worthy the careful attention and study of the merchant, the depositor and the bank student seeking advancement. Further information regarding any case published will be furnished on application.

DEPOSIT WHERE BANK INSOLVENT.

Knafft v. Knoxville Banking & Trust Co., Supreme Court of Tennessee, November 14th, 1914. 170 S. W. Rep. 476.

A company deposited checks to its credit in a bank as cash items, the company having the right to draw against the deposit, At the time of the deposit, the bank was insolvent to the knowledge of its managing officers. After a receiver was appointed the depositor had the drawers of the checks stop payment. The checks were subsequently collected under an agreement saving the rights of the parties. It was determined that, under these circumstances, the receiver held the proceeds of the checks in trust for the depositor and that the depositor was entitled to the full amount.

General creditor's proceeding by Joseph Knafft against the Knoxville Banking & Trust Company, wherein the Rand Powder Company intervened. From a decree denying intervener's claim, intervener appeals. Affirmed in part, and reversed in part and remanded.

See, also, 128 Tenn. 181, 159 S. W. 838, 50 L. R. A. (N. S.) 167.

WILLIAMS, J. The questions for decision in this case arise on the petition of intervention filed by the Rand Powder Company in this (a general creditors) proceeding, to wind up the affairs of the Knoxville Banking & Trust Company as an insolvent corporation.

The powder company deposited as cash items in the bank on December 12, 1912, three checks of its customer aggregating $1,505.24. The company had the right to check against its deposit account. On the same day the bank forwarded the three checks to its correspondent bank at Cincinnati, where they were credited in like manner in favor of the sending bank on December 13th. On the next day the Knoxville bank closed its doors. At and before the receipt by it of the

NOTE.—For other similar decisions see Banking Law Journal Digest, § 159.

three checks, it was hopelessly insolvent, and so known to be by its managing officers; and on December 16th its assets were placed in the hands of a receiver in the general creditor's cause referred to. After the receiver was appointed, the powder company telegraphed the several drawers of the checks in its favor, as payee, requests to stop payment, with the evident purpose of causing the checks to return from the banks of the drawers through the channel of transmission to the receiver of the bank of original deposit. They were charged against the Knoxville bank by its Cincinnati correspondent and returned to the receiver.

By agreement, saving the right of the parties in interest, the checks were collected and their proceeds held to await result of this litigation.

That the reception of the checks on deposit by the Knoxville bank, when it was in a condition of hopeless insolvency, known to its managing officers, was a transaction rescindable for fraud, and that the depositor may recover the checks, or their proceeds, if not dissipated or so mixed with other funds that they cannot be identified or traced, is so well settled by our cases as not to require citation.

In the pending case there is no difficulty in respect to the tracing of the deposited items; the identical checks came into the hands of the receiver after insolvency; and, nothing else appearing, the receiver took them to hold in trust for the defrauded depositor.

We are not concerned with a consideration of any claims that may have been urged had the Cincinnati bank held the checks and sought to establish right thereto. That bank evidently had no cause to withhold the checks from the Knoxville bank and released and returned them, as has been stated.

It is insisted in behalf of the receiver that, when the checks were received and credited by the Cincinnati bank, the right to follow the same as trust funds was lost to the depositor company, which could not by its own volition and act stop payment of the checks, and thereby render them traceable and recoverable.

We cannot hold with this insistence. The depositor did nothing beyond its legal right. By a well-known rule of law it is required that, in order to relief, one who has been defrauded shall act promptly in disaffirmance and self-protection, and it was within the privilege of the depositor to save itself harmless by procuring the drawers of the checks to stop payment.

The checks did not operate as assignments of any parts of their drawers' funds in their banks to the credit of the drawers. Negotiable Instruments Act 1899 (Laws 1899, c. 94); Akin v. Jones, 93 Tenn. 353, 27 S. W. 669, 25 L. R. A. 523, 42 Am. St. Rep. 921.

Before payment or certification by their banks, the drawers of the checks had a right to countermand payment. Pease v. Bank, 114 Tenn. 693, 88 S. W. 172.

In the case of First Nat. Bank v. Strauss, 66 Miss. 479, 6 South.

232, 14 Am. St. Rep. 579, it was, without argumentation, held that such a depositor in an insolvent bank might stop payment and recover.

In Grant v. Walsh, 145 N. Y. 502, 40 N. E. 209, 45 Am. St. Rep. 626, it appeared that there was a stopping of payment of a check, deposited in an insolvent bank, by the act of the depositor after it had been passed to a correspondent bank, and it was held that the receiver had no enforceable right to the check as against such depositor.

The chancellor, in decreeing in favor of the receiver on this phase of the case, erred.

Another and distinct claim is advanced in its intervening petition by the Rand Powder Company, based upon the follows facts: That company had in the bank a considerable deposit on the date its affairs were placed in the hands of the receiver. The company was at that time indorser on a note executed to it as payee by the King Mountain Coal Company, which note had been discounted in the bank. It is now contended that the King Mountain Coal Company, the primary obligor, is insolvent, and that this fact entitled the powder company to have set off against the note an equivalent amount of its deposit. However, it appears that, since the closing of the doors of the insolvent bank, the powder company has been furnished coal by the maker company in satisfaction of the note obligation, as between themselves; and it therefore cannot stand to be loser, by reason of the coal company's insolvency, in event the receiver compels the indorser to pay. When it pays, equity, looking at substance, will see that it was the maker who paid through the indorser. The claim to equitable set-off fails where the primary obligor, although insolvent, has indemnified the indorser, secondarily liable (Knaffl v. Trust Co., 128 Tenn. 181, 188, 159 S. W. 838, 50 L. R. A. [N. S.] 167; In re Middle District Bank, 9 Cow. [N. Y.] 413, note); a fortiori where the indorser has been satisfied.

To sustain the claim to set-off would be to allow a preference to the powder company over other creditors of the failed bank without any basis therefor on equity.

It falls, most obviously, under the rule denying preference to one occupying the status of secondary obligor announced in the recent decision of this court cited above.

The chancellor properly denied that claim. The decree below is affirmed as to that feature, but reversed as to the ruling on the checks. Remand for execution of a decree to be entered here in accord with this opinion.

NOTICE OF DISHONOR OF DEMAND NOTE.

Frazee v. Phoenix Nat. Bank, Court o Appeals of Kentucky, November 20, 1914. 170 S. W. Rep. 532.

In central Kentucky a demand note is due four months after its date, if not before, and an indorser of such a note is discharged unless the note is presented and

notice of dishonor is given before that time elapses. This conclusion was reached because it appeared that in central Kentucky banks rarely permit such paper to run longer than four months without renewal.

The indorser of a note is entitled to notice of dishonor although it is held by the bank of which he is president.

Appeal from Circuit Court, Fayette County.

Action by Tucie Frazee, executrix of D. F. Frazee, to settle the estate. From a judgment allowing certain claims of the Phoenix National Bank and disallowing others, the executrix appeals, and the bank cross-app als. Reversed, with directions.

The third and fourth claims present the question whether the Frazee estate, by reason of his indorsement of the two notes in question, is liable thereon. One of them is a note for $2,716.25, payable on demand, executed August 20, 1908, by Alford to Frazee, and indorsed and discounted by him to the bank. The other is a note for $2,261, dated April 22, 1908, and due in six months, executed by John McClintock to Frazee, and indorsed and discounted to him by the bank. It will be observed that one of these is a demand note, and the other a six months' note; the latter falling due about four months before the death of Frazee.

The first question presented is when the demand note for $2,716,25 should have been presented for payment and notice of dishonor given. Our Negotiable Instruments Act (section 3720b, Kentucky Statutes), sub. sec. 71, provides:

"Presentment on Maturity. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof."

Subsection 192 of the same act provides:

"'Reasonable Time' and 'Unreasonable Time.' In determining what is a 'reasonable time' or an 'unreasonable time' regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case."

This demand note was dated the 20th day of August, 1908, just six months before the death of Frazee, and the question is: Under the terms and the spirit of that act, when should there have been a presentment for payment and notice of dishonor? It is a matter of common knowledge that in the banks of central Kentucky commercial paper is rarly permitted to run longer than four months without renewal, and it may be said to be a custom, or usage of trade, that such paper is ordinarily payable within that time. Such being the usage of trade, this note should have been treated as due at least on the 20th day of December, 1908, no demand having been previously made

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NOTE.—For other similar decisions see Banking Law Journal Digest, §§ 323, 401.

thereon, and Frazee was entitled to notice of dishonor thereof immediately thereafter, unless his position as president of the bank, at which it was payable, and to which he had indorsed it, would operate as a waiver of such notice to him.

So that treating this note as due on the 20th of December, 1908, and the other note as due on the 22d of October, 1908, which it was by its terms, we have the remaining question whether Frazee, by reason of his position as president of the bank, was entitled to notice of dishonor. If he was entitled to such notice, he is released because he did not have it. If his position as president of the bank must operate as a waiver of such notice to him, then his estate is liable.

Subsection 89 of the Negotiable Instruments Act reads as follows:

"Notice of Dishonor. Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged."

This precise question was involved as to the vice-president of a banking institution in the case of First National Bank v. Bickel, 154 Ky. 11, 156 S. W. 856. In that case Bickel, who was vice-president of the bank, had indorsed the paper of another corporation in which he was interested, and the same had been discounted by the bank. It was urged that he, as vice-president of the bank, had actual knowledge when the paper fell due, and that the other corporation had no funds with which to meet it, and that, he being an officer of the bank, it was his duty to see that notice of dishonor should be given, and that he was estopped to deny that it had not been given. The court said in response to this argument:

"We do not know of any authority, and have not been referred to any by counsel for appellant, holding that the vice-president of a bank is, by virtue of his office alone, charged with the duty of seeing that notice of the dishonor of paper is given to the person entitled thereto or liable in any manner if he fails to do so. Of course the vice-president of a bank, or the president, or any director, or indeed, any other officer or employee, might be charged by resolution of the bank or by its habit and custom of dealing with the duty of protesting paper or giving notice of its dishonor, but there is no showing in these cases that Bickel had ever been authorized by the bank to do these things, or that there was any custom of the bank under which he did or should do them; and the vice-president of a bank, simply because he is vice-president, is under no duty to attend to these matters, and is not to be held liable for his failure to do so. * * * It it usual and customary for the cashier of the bank to look after matters of this kind, and, in the absence of any showing that it was not the custom of the cashier of the First National Bank to attend to the protesting of paper and the giving of notice of dishonor, we must presume that it was the duty of the cashier to have discharged this duty in respect to these notes."

It was also urged that, inasmuch as Bickel was an officer of the

bank, no notice of dishonor to him was necessary, and the court, in response to this, said:

"Nor do we think that the fact that Bickel was an officer of the bank relieved the bank from the necessity of giving him notice. Bickel signed the paper, not as an officer of the bank but as an officer of another corporation borrowing money from the bank and his rights and liability on the paper are precisely the same as those of the other parties who signed it. The statute, requiring that notice of dishonor shall be given, is peremptory, and all persons entitled to the notice are released from liability, unless it is given, although they may be connected with the bank, whose duty it is to give notice as officers or in some other capacity, with the exception that the bank officer, whose duty it was to give notice would be, of course, estopped to plead want of notice as a defense to a suit by the bank against him."

In the case of Ennis v. Reynolds, 127 Ga. 112, 46 S. E. 104, it was claimed that no notice to the indorser of a note, who was also the president of the bank at which it was payable, was necessary, and the court, in answer to that argument, said:

"It is claimed, because, the indorser was the president and a director of the bank at which the note was payable, that no notice or protest was necessary; that the fact of the relation the indorser bore to the bank at which the note was payable amounted to a waiver on his part of any notice to him of what took place at the bank of which he was an official. We do not think that this fact could be properly treated as amounting to the waiver of the right which the indorser has under the law to receive notice of dishonor. It may be that the bank with which the note was deposited for collection would be liable to the holder in damages in the event that the failure to give the notice was due to its negligence; and, if the bank was so held liable, the agent or officer whose negligent act thus rendered it liable might be liable to the bank: but the fact that such a liability might exist on the part of the bank, or one of its officers or agents, would not render the indorser liable on a paper, when the notice of dishonor was not given to him at the time and in the manner prescribed by law."

There is nothing in this record showing that under the rules of the bank, or any custom followed by it, it was the duty of the president to give notice of dishonor of paper payable at the institution, or that the duty was in any way imposed on him by the bank to see that the notice was given. The same was true in the Bickel Case as to the vice-president of a bank. Frazee not being charged with the duty of giving notice or seeing that the notice was given, he, under the rulings cited, was entitled to notice as any other indorser.

The reason of the rule seems to be that, where the president or other officer of the bank is dealing in his individual capacity with the institution, he, for the time, and for the purpose of the particular transaction, throws aside his official connection with the bank, and must therefore be considered as dealing with it arm's length, just as others would. We have therefore concluded that Frazee, as indorser, was entitled to notice of dishonor, and none having been given, under express terms of the statute, he was released from liability as such.

NOTE GIVEN IN GAMBLING TRANSACTION.

Citizens' National Bank v. McDannald, Supreme Court of Appeals of Virginia, November 12, 1914. 83 S. E. Rep. 389.

A note made and delivered to a bank for the purpose of raising money to be used in a stock gambling transaction, which fact was unknown to the bank, is not void in the hands of the bank, under the Virginia statute declaring that every contract where money is knowingly lent to be used in wagering shall be void.

Appeal from Circuit Court, Bath County.

Action by the Citizens' National Bank against C. L. McDannald. From a judgment for defendant, plaintiff appeals. Reversed and remanded.

WHITTLE, J. In the year 1907, C. L. McDannald, the appellee, who at that time was a resident of Hot Springs, Va., borrowed $1,200 from the Citizens' National Bank of Covington, Va., for which sum he gave his negotiable note, with E. F. Carpenter as accommodation indorser. Subsequently McDannald paid the bank $500 by way of curtail, and gave a renewal note for $700, with Carpenter as indorser. When the renewal note became due, it was protested for nonpayment; and thereupon the bank, suing for the benefit of Carpenter, brought an attachment in equity against McDannald (who in the meantime had become a nonresident of the state) to subject an interest in real estate to which the defendant was entitled to the discharge of the debt.

The main defense relied on by McDannald was that the money for the loan of which the original note was given was intended to be used, and was in fact used, to keep up margins on a stock-gambling transaction—that is to say, in payment of the difference between the buying and selling price of certain stock, which was not intended to be delivered—and that Carpenter had notice of the use to be made of the money. For that reason the circuit court was of opinion that the suit could not be maintained, and dismissed the bill.

We may assume that the money borrowed by McDannald was to be used in a wagering transaction, within the meaning of section 2836 of the Code, of the nature of which Carpenter had notice; but the question still remains: Does the case come within the prescription of the statute?

The section reads as follows:

"Every contract, conveyance, or assurance, of which the consideration, or any part thereof, is money, property, or other thing won in or bet at any game, sport, pastime, or wager, or money lent or advanced at the time of any gambling, betting or wagering, to be used in being so bet or wagered (when the person lending or advancing it knows that it is to be so used), shall be void."

The $1,200 for which the original note was given was not loaned to McDannald by Carpenter, but by the bank, and it is neither averred in

NOTE.—For other similar decisions see Banking Law Journal Digest, § 135.

the pleadings nor proved that the bank knew the purpose for which the money was to be used. It was the business of the bank to lend money, and it was under no obligation "to inquire of his borrower what he wanted the money for, nor is he to be affected by any use to which * * his borrower chose to make of the money." Krake v. Alexander, 86 Va. 206, 210, 9 S. E. 991, 992. The burden rested upon the borrower to prove that he was engaged in a stock-gambling transaction, and that the bank knew the unlawful use to which the money was to be applied. McIntyre v. Smyth, 108 Va. 736, 62 S. E. 930.

It is plain that the case is not covered by the statute. The note being valid in its creation, it was not affected by the circumstance that it subsequently passed into the hands of a holder with notice of the object to which the avails were to be applied. It was a valid security in the hands of the bank, and therefore the bank "was entitled to have the whole world for its market," and could transmit a complete title to Carpenter, although he had notice of the use that McDannald intended to make of the money; "the general rule being that, if a person taking with notice purchase from one without notice, he is entitled to stand in the latter's shoes and take shelter under his good faith." Aragon Coffee Co. v. Rogers, 105 Va. 51, 55, 52 S. E. 843, 844 (8 Ann. Cas. 623).

It follows from these views that the decree of the circuit court must be reversed, and the case remanded for further proceedings not in conflict with this opinion.

Reversed.

NOTE MADE WHILE INTOXICATED.

Matz v. Martinson, Supreme Court of Minnesota, November 6, 1914. 149 N. W. Rep. 370.

Where the maker of a note signed it while he was intoxicated, and thereafter, with full knowledge of the transaction, affirms the note and promises to pay it, it can be enforced against him.

Appeal from District Court, Wilkin County: S. A. Flaherty, Judge.

Action by Joseph Matz, doing business as the Joseph Matz Company, against Martin Martinson. From denial of new trial defendant appeals. Affirmed.

TAYLOR, C. This is a suit upon a promissory note. The defense interposed is that defendant was so drunk when he signed it that he was incapable of entering into a contract. At the close of the evidence all testimony tending to prove such drunkenness was stricken out on motion of plaintiff. The testimony so stricken out would have supported a finding by the jury that defendant was intoxicated to the extent claimed, and consequently the action of the court in striking it out presents the question as to whether the fact of such intoxication was a defense to the suit.

The note, together with a chattel mortgage upon some horses, was

executed on January 10, 1906. Defendant had previously mortgaged the horses to a third party. He subsequently sold them, and apparently applied the proceeds upon the first mortgage. He paid none of such proceeds to plaintiff. Plaintiff made no attempt to enforce his mortgage, and never received anything thereunder. He made several threats to prosecute defendant criminally for selling mortgaged property, but no prosecution was ever instituted. Defendant, at the trial, admitted and testified that he was informed of the note and mortgage and knew that he had executed them on January 11, 1906, the next day after their execution; that the note was given for a prior debt, and that he owed such debt; that after knowing that he had executed the note, he repeatedly promised to pay it; that he made two payments upon it—one of $50 in September, 1908, and another of $50 in October, 1908; and that he made no claim to plaintiff that the note was invalid, because executed while he was intoxicated, until some time in the spring of 1913. His wife testified that one of plaintiff's attorneys came to the house at a time when her husband was absent; and that, in response to an inquiry as to whether they could make a payment upon the note, she informed him that they would not pay it as her husband was intoxicated when he signed it. She was unable to fix the date of this conversation with any definiteness, but stated that it occurred some two years before the trial. As the trial took place in December, 1913, this conversation probably occurred some time in 1911. It is not claimed that there was any act repudiating the note prior to this conversation; but defendant contends that this conversation, and the statement which he himself made in the spring of 1913, constituted a disaffirmance of the note and absolved him from any obligation to pay it.

Although a party may repudiate a contract entered into when he was in such a state of intoxication that he could not comprehend its terms, it is well settled that such contract is not void, but voidable only. If, afterwards becoming sober and comprehending its terms, he affirms it, it becomes valid and binding. If he elects to repudiate it, he must give notice thereof with reasonable promptness. He is allowed a reasonable time after he understands the nature and effect of the transaction in which to disaffirm it; but, if he takes no steps to disaffirm it within a reasonable time after he has such knowledge, he is deemed to have ratified it. Carpenter v. Rogers, 61 Mich. 384, 28 N. W. 156, 1 Am. St. Rep. 595; J. I. Case Threshing Machine Co. v. Meyers, 78 Neb. 685, 111 N. W. 602, 9 L. R. A. (N. S.) 970; Kelly v. L. & N. R. R. Co., 154 Ala. 573, 45 South. 906; Strickland v. Parlin & Orendorf Co., 118 Ga. 213, 44 S. E. 997; Spoonheim v. Spoonheim, 14 N. D. 380, 104 N. W. 845; Fowler v. Meadow Brook Water Co., 208 Pa. 473, 57 Atl. 959; 17 Am. & Eng. Enc. (2d Ed.) 401.

The note in controversy was given for a valid debt previously contracted. Defendant does not claim any defense to the debt, nor that he was overreached in any manner. He recognized the note as a valid

and binding obligation for fully five years, and during that time made numerous promises, both verbally and by letter, that he would pay it. The record shows conclusively that he ratified the execution of the note after having full knowledge of the transaction. Therefore whether he was intoxicated when he signed it became wholly immaterial, and evidence tending to show such facts was properly stricken from the record.

Defendant complains of the manner in which the case was submitted to the jury. He offered no defense except the claim that the note was invalid because signed while he was intoxicated. As already pointed out his subsequent ratification of the note precluded him from asserting this defense. When the case went to the jury plaintiff's note stood admitted, and there was no evidence tending to show any defense to it whatever. Plaintiff moved the court to direct a verdict in his favor. Defendant objected under chapter 245, Laws of 1913. Gen. St. 1913, § 7998. The trial judge endeavored to follow this statute. He denied plaintiff's motion. He called the attention of the jury to the note, and to the defense of intoxication, and gave them two forms of verdict. He told them that the testimony as to intoxication had been stricken out and was not to be considered by them. He further told them to take the note and, if plaintiff was entitled to recover, to return a verdict for the amount thereof, but that he did not direct a verdict for pialntiff.

Defendant contends that withdrawing the evidence as to intoxication from the jury infringed the rights secured to him by the statute. This somewhat unusual statute reads as follows:

"When at the close of the testimony any party to the action moves the court to direct a verdict in his favor, and the adverse party objects thereto, such motion shall be denied and the court shall submit to the jury such issue or issues, within the pleadings on which any evidence has been taken, as either or any party to the action shall request, but upon a subsequent motion by such moving party after verdict rendered in such action, that judgment be entered notwithstanding the verdict, the court shall grant the same if, upon the evidence as it stood at the time such motion to direct a verdict was made the moving party was entitled to such directed verdict." Section 7998, G. S. 1913.

It may be noted in passing that defendant made no request for the submission of any issue to the jury, but merely objected to the granting of plaintiff's motion. This statute has no reference to the reception or rejection of evidence, and in no way changes or restricts the power of the court to determine questions arising in respect thereto. The court has precisely the same power to receive, exclude and strike out evidence that it had before the passage of the statute. Evidence offered for the purpose of proving facts which if established, would not affect the result of the action may properly be excluded or stricken out as immaterial.

The statute contemplates the existence of questions which are for

the jury to determine, and which have a bearing upon the result of the action. Such questions may arise either because the facts are in controversy, or because different conclusions may be drawn from the undisputed facts. But if there be no such questions, there are no issues for submission to the jury. The court is not debarred from stating to the jury the rules of law which govern the case, and should do so. He performs his full duty under the statute when he states the case to the jury as it actually is, explains the rules of law which apply, and directs them to return such verdict as they may deem proper under the circumstances. Whether the court no longer possesses the power to direct a verdict in any case, if objection be made thereto, is neither involved nor decided herein.

The record in the present case discloses no error affecting any substantial right of defendant, and the order denying a new trial is affirmed.

PROTEST OF NOTE.

First National Bank of Shickshinny v. Tustin, Supreme Court of Pennsylvania, July 1, 1914. 92 Atl. Rep. 119.

It is not necessary to protest a promissory note in order to charge the indorser. Presentment and notice of dishonor are sufficient for that purpose.

Appeal from Court of Common Pleas, Columbia County.

Action by the First National Bank of Shickshinny, Pa., against George M. Tustin.. From judgment for plaintiff for want of sufficient affidavit of defense, defendant appeals. Affirmed.

POTTER, J. This is an appeal from a judgment entered for want of a sufficient affidavit of defense. The action was scire facias sur mortgage. It appears from the record that upon October 1, 1910, the defendant gave to the plaintiff a mortgage to secure an indebtedness of $3,589.93 as evidenced by a certain promissory note for that amount, made by E. B. Tustin to the order of defendant, by whom it was indorsed, and at whose request, it was discounted by the plaintiff. The said note was dated October 1, 1910, and was payable one year after date, the mortgage being given to cover any renewal or renewals of the note. The præcipe for the scire facias, contained an averment that default had been made in payment of the principal of the note, and of all installments of interest.

In the affidavit of defense, the first averment is failure of consideration for the mortgage. It is alleged that the mortgage and the note in question were given in settlement of four certain suits, which had been brought by plaintiff against E. B. Tustin and defendant, on prior promissory notes made and indorsed by them, and upon the express

NOTE.—For other similar decisions see Banking Law Journal Digest, § 409.

agreement that the said four actions would be promptly marked, "Settled and discontinued." It is further alleged in the affidavit that this agreement was not kept, in that these actions were not marked settled and discontinued. An inspection of the mortgage shows, however, that the real consideration for the note and the mortgage was not the agreement to mark the suits settled and discontinued, but that the actual consideration was the prior indebtedness represented by the two notes on which the suits were brought. Whether or not the payment of costs and expenses was to be a precedent to the marking of the suits as settled and discontinued does not appear, but it would naturally be required, and if payment of these costs was not made, that might be sufficient to account for the delay. In any event, if appellee considered that the agreement to mark the former suits discontinued had not been complied with, his proper course would have been to apply to the court below to enforce the agreement in the suits to which it related. The court, however, very properly held that there was an endeavor to set up in the affidavit of defense a contemporaneous parol agreement, the effect of which would have been to vary the terms of the mortgage, and this without an averment that anything had been omitted from the terms of the mortgage by fraud, accident or mistake. The mortgage contains no reference to the discontinuance of any suits, and it contains the express statement that it was given to secure the payment of the debt named in the promissory note.

"With no averment in the affidavit of defense, and with no offer on the trial to prove that there had been any fraud, accident or mistake in the execution of the agreement, its plain terms were not to be radically changed by parol." Crelier v. Mackey, 243 Pa. 363, 366, 90 Atl. 158.

As a second matter of defense, it is stated in the affidavit that when the promissory note of E. B. Tustin indorsed by defendant became due and payable on October 1, 1911, no protest or notice of protest was made or given to said defendant, and for this reason he claimed to be discharged from liability as indorser. While it is customary to protest a promissory note for nonpayment, yet such protest is not necessary. All that is required is that the note shall be presented for payment, and notice of nonpayment given. The law makes the certificate of a notary public, who makes the protest, prima facie evidence of the facts therein stated. But a note may be presented for payment, and notice of nonpayment may be given by the holder or any other person. An averment, therefore, that the note was not protested, or notice of protest given, is not sufficient; for it may have been presented for payment and notice of nonpayment given, without any formal protest having been made. Furthermore the mortgage was not given as collateral to the liability of defendant as indorser. It is expressly stated in the mortgage, that:

"It is fully understood and agreed that this mortgage is given,

taken and held, as collateral security for the payment of the principal debt and interest of the said note above recited."

A third ground of defense averred in the affidavit is that E. B. Tustin has certain claims of set-off against plaintiff, which amount to more than the sum due on the promissory note and the collateral mortgage. It would appear that these claims accrued prior to the suits brought upon the original notes, and it would seem that if such a defense existed it would properly and naturally have been taken into account, in the settlement, which was made in the giving of the new note and the collateral mortgage; but at any rate this claim is not one of set off by defendant in his own right. In order to be allowed as set-off to one another, demands must be in the same right. Tagg v. Bowman, 99 Pa. 376.

Aside from this the averment in this respect is not sufficiently definite. Claims of set-off should be averred with the same particularity as is required in statements of claim. Reilly v. White, 234 Pa. 115, 119, 82 Atl. 1107; Law v. Waldron, 230 Pa. 458, 466, 79 Atl. 647, Ann. Cas. 1912A, 467.

A further alleged defense which is set up in the affidavit is also in the nature of a set-off; being a claim by defendant against plaintiff in the sum of $10,000 for damages caused by the alleged failure of the plaintiff to mark the orginal suit, above referred to, settled and discontinued. Aside from the apparent absurdity of this claim upon its face, it is essentially lacking in the particularity required in the averment of a claim of set-off, as was pointed out in connection with the ground of defense just previously mentioned.

In holding that none of the allegations of the affidavit of defense are sufficient to prevent judgment, the court below was clearly right.

The assignments of error are all overruled and judgment is affirmed.

ACCEPTANCE OF BILL DRAWN BY AGENT.

Watauga County Bank v. McQueen, Supreme Court of Tenn., November 27, 1914. 170 S. W. Rep. 1025.

A bill of exchange, drawn by an agent upon his principal, acting with proper authority, for the purpose of raising funds to be used in the principal's business, requires no acceptance.

Certiorari to Court of Civil Appeals.

Action by the Watauga County Bank against J. J. McQueen. From a judgment of the Court of Civil Appeals affirming a judgment for the plaintiff, defendant brings certiorari. Affirmed.

NEIL, C. J. The defendant owned a mercantile business in the town of Butler, Johnson county, and a branch store in Neva, in the same

NOTE.—For other similar decisions see Banking Law Journal Digest, § 2.

county. In charge of the latter business was one L. J. Markland, who was managing the branch business as the general agent of the defendant, and, as such, was largely engaged in buying country produce. The custom of the business was to pay for the produce by drawing bills of exchange on McQueen at Butler, payable at the Johnson County Bank at Butler. These bills were signed by Markland. He drew 30 or 40 of them a month, and, in the course of the two years he had been acting as agent, and drawn perhaps 700 or 800, and, during the continuance of his agency, and that of the prior agents occupying the same position, as many as 3,000 of these bills had been drawn and paid through the Johnson County Bank. The custom was for the bank to pay them on presentation, just as checks are paid, without a formal acceptance by the drawee, and these bills had obtained general currency throughout the section of country in which the two stores were operated, and were considered and treated as checks of defendant. It was generally known that Markland was the agent of McQueen in drawing these bills. All of them were paid on presentation, except the two in controversy in the present case. These two bills were each for $25, and were drawn in favor of C. C. Greer. The latter was quite a large buyer of produce, and his business was very much valued by Markland and McQueen. Markland had been instructed by McQueen not to "build up anybody's account," by which it was meant and understood that he was not to advance money to any buyers of produce, but only to pay for produce sold to him for McQueen. This instruction, however, had been frequently violated by Markland with the knowledge and connivance of McQueen, in favor of Greer, and the drafts or bills paid notwithstanding, and without objection, because competition was close, and Greer was regarded as a very active, energetic, and valuable buyer of produce for the house. Acting under this authority and course of business, the two bills in question were issued to Greer. He deposited them to his credit in the complainant bank, in the usual way, and soon checked out nearly all of the money. He did not, however, use this money to buy produce with, as it was contemplated by Markland and McQueen he would do, but, on the contrary, absconded with two lewd women. Complainant bank had no notice of Greer's fraudulent purpose. As soon as Markland learned that Greer had disappeared, he telephoned the fact to McQueen, and the latter notified the Johnson County Bank not to pay these bills when they should be presented. Payment accordingly being refused, the present suit was brought to compel payment. The ground of the action stated is refusal to accept and the refusal to pay. The suit was brought before a justice of the peace, and from his judgment in favor of plaintiff an appeal was prosecuted to the circuit court of Johnson county. The bills were exhibited in the evidence, and all of the facts above set out were proven without exception, on the trial.

The circuit court rendered judgment against defendant, for the

amount of the bills and interest, less the amount remaining to Greer's credit in the complainant bank, and on appeal this judgment was affirmed by the Court of Civil Appeals. The case was then removed to this court by the writ of certiorari.

Under the facts stated there can be no doubt that Markland had authority as McQueen's agent to draw the bills. Tiedeman, Com. Paper, §§ 76, 79; 1 Clark & Skyles on Law of Agency, § 139; 31 Cyc. 1263.

The bills having been drawn by the defendant's agent on him for money to be used in his business, and by authority of the defendant, the drawer and drawee must be treated as, in effect, the same person, and hence the drawee was liable without formal acceptance, and could not escape liability by refusing to accept or pay, or by stopping payment at the bank where. according to the course of business, such bills were accustomed to be paid. Gray Tie & Lumber Co. v. Farmers' Bank, 109 Ky. 994, 60 S. W. 537; First National Bank v. Home Insurance Co. of New York, 16 N. M. 66, 113 Pac. 815; Raymond v. Mann, 45 Tex. 301; McCormick v. Hickey, 24 Mo. App. 363; 1 Dan. Neg. Inst. (6th Ed.), §§ 128, 482. In the latter section it is correctly said that this rule is recognized by the Negotiable Instruments Law in section 130, which is:

"Where in a bill the drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or promissory note."

The suit was not brought directly on the instruments, either as notes or bills, but on the facts of the case, as may be done in this state.

We are of the opinion that the judgment of the Court of Civil Appeals should be affirmed.

NONNEGOTIABLE NOTE.

Reynolds v. Vint, Supreme Court of Oregon, November 24, 1914, 144 Pac. Rep. 526.

A note which provides that the payee may declare it due at any time he deems it to be insecure is nonnegotiable.

In Banc. Appeal from Circuit Court, Tillamook County; Webster Holmes, Judge.

Action by C. E. Reynolds against J. W. Vint and another. Judgment for defendants, and plaintiff appeals. Affirmed.

This is an action to recover the amount due upon a promissory note which reads as follows:

"$475.00 Tillamook, Oregon, July 10th, 1912.

"For value received I promise to pay to the order of C. E. Reynolds, at Tillamook, Oregon, the sum of four hundred and seventy-

NOTE.—For other similar decisions see Banking Law Journal Digest, § 306.

five dollars, in gold coin of the United States of America, of the present standard value, the same to be paid as follows, to wit: The sum of $25.00 to be paid each month, on or before the 15th day of the month, provided that not less than $250.00 shall have been paid on or before one year from the date hereof, but in case the said $250.00 shall have been paid within one year from this date, no delinquency shall be declared by the holder of this note. All deferred payments shall bear interest at the rate of seven per cent. per annum. On failing to make the payments or any of the above payments as above provided when due, the holder of this note at his option may declare the whole amount then unpaid due and collectible. And in case suit or action is instituted to collect this note, or any portion thereof, I promise to pay, in addition to costs and disbursements provided by statute, such additional sum as the court may adjudge reasonable as attorney's fees in such suit or action. This note is given for one Flanders 20 automobile, No. 55745, No. 6579, and the express condition of the sale and purchase is such that the title, ownership, or possession does not pass from the said C. E. Reynolds until this note is paid in full, and the said C. E. Reynolds, or his agents, have full power to declare this note due and take possession of the said automobile, for which it is given, when they deem themselves insecure, even before maturity of the note. And if I sell, loan, or otherwise dispose of the above-described machine, I hold myself liable to the full penalty of the law, and hereby authorize the said C. E. Reynolds to enter the premises wherever the said machine may be found and take and carry the same away. And I agree not to remove above described machine from the county of Tillamook without permission in writing from the said C. E. Reynolds, and if for any reason the machine herein purchased revert to the said C. E. Reynolds, I hereby authorize him, or his legal representatives to sell the same, deduct all legitimate expenses in connection therewith, and apply the balance on this note. Any balance remaining then unpaid I hereby acknowledge as a just debt, which I agree to pay.

"J. W. Vint.
"G. B. Lamb."

The defendant Lamb answered, admitting the execution of the note, and alleging defensively, in substance, that he signed as an accommodation surety; that he received no part of the consideration for the note, and that it was given for the purchase price of an automobile bought by Vint of plaintiff, and that plaintiff at the time had full knowledge that defendant Lamb had signed as surety only; that plaintiff had thereafter waived his security and given his consent to defendant Vint to dispose of and sell the automobile, which was of value sufficient to have liquidated the note. The defensive matter was denied, and the parties went to trial. The court, over the objection of plaintiff, admitted evidence tending to show that the relations of the parties were as stated in defendant's answer, and there was also evidence tending to show that the value of the automobile was greater than the amount of the note. The court also instructed the jury that if they found plaintiff had given his consent, either actually or by implication, to Vint to dispose of the automobile, and thereby released it from the lien created by the terms of the note, they should offset the

value of such security against the amount claimed by plaintiff. There was a verdict and judgment for defendants, and plaintiff appeals.

McBRIDE, C. J. (after stating the facts as above). It seems to have been assumed upon the trial that this case was governed by the Negotiable Instruments Law now in force in this state and in most of the other states of the Union, but such is not the case. The title of the act (Sess. Laws 1899, p. 18) is:

"An act relating to negotiable instruments—being an act to establish a law uniform with the laws of other states on that subject."

This limits the operation of the act to negotiable paper, and as to notes which are not of this character the law remains as it was before its adoption. Selover, Neg. Ins. § 2.

A note providing as the note in suit does, that whenever Reynolds or his agents deem the note insecure they shall have power to declare it due even before maturity, is nonnegotiable. 3 R. C. L. p. 910; Holiday State Bank v. Hoffman, 85 Kan. 71, 116 Pac. 239, 35 L. R.A. (N. S.) 390, Ann. Cas. 1912D, 1.

This brings the case within the rule, frequently announced by this court, that an accommodation maker, known to be such by the payee of the note, is entitled to the rights of a surety, and a release by the holder of a note of a security given by the principal debtor releases the accommodation maker pro tanto. Hoffman v. Habighorst, 38 Or. 261, 63 Pac. 610, 53 L. R. A. 908. The opinion last cited contains a full citation of authorities upon this subject, and has settled the law in this state. The evidence very strongly tends to show that plaintiff knew that defendant Lamb was an accommodation maker merely, and, this being the case, the court did not err in submitting the matter to the jury.

The judgment is affirmed.

CONTRACT FOR SALE OF STOCK BY NATIONAL BANK.

Hotchkin v. Third National Bank of Syracuse, Supreme Judicial Court of Massachusetts, November 24 1914. 106 N. E. Rep. 974.

A national bank has no power to make a contract to sell shares of stock in a corporation, to which it does not hold title, and such a contract cannot be enforced either in an action for specific performance or for damages.

Report from Superior Court, Suffolk County; Charles U. Bell, Judge.

Action by William Hotchkin against the Third National Bank of Syracuse, N. Y. A judgment was rendered for defendant, and the case reported to the Supreme Court. Judgment for defendant.

BRALEY, J. The jury specially found that the defendant contract-

NOTE.—For other similar decisions see Banking Law Journal Digest, § 291.

ed to sell and deliver 100 shares of the capital stock of the Syracuse Rapid Transit Company. It having failed to perform the contract the plaintiff contends that he is entitled to damages for the breach. It appears from the record to have been uncontroverted that at the time of the negotiations the bank did not have any of the stock, but it was acting for a "client" who owned the shares. The letter of the cashier, on which the plaintiff relies as an acceptance in writing of the offer to purchase, recites that the sale "was upon condition that our client would fill, and he has been unable to so far, and it is the impression of his broker that he sold the stock to you through another channel," and in the second letter, two days later, in reply to the plaintiff's demand for delivery, the cashier states:

"Our client has not filled. * * His broker informs me now that his client sold the stock to you direct the same day that we were negotiating with you."

If, without deciding, it is assumed that the sale was unconditional, as the plaintiff urges, and, if made here, the R. L. c. 4, § 5, were satisfied, the answer avers the lack of corporate power to make the contract. And by the third request the defendant asked the trial court to rule that:

"If any contract be found to have been made for the sale to the plaintiff of the stock in question, such contract is ultra vires the defendant corporation, and the plaintiff cannot recover under such contract."

We are of opinion that the ruling should have been given. The defendant is a national bank organized under Rev. St. U. S. § 5133 (U. S. Comp. St. 1913, § 9658, and Act April 12, 1902, c. 503, 32 Stat. 102 U.S. Comp. St. 1913, § 9673.) Its corporate powers are defined in section 5136 (9661), and the question whether a national bank can deal in the stock of other corporations was fully considered in California Nat. Bank v. Kennedy, 167 U. S. 362, 17 Sup. Ct. 831, 42 L. Ed. 198. If the defendant had held the stock as collateral security for a loan it could, upon default of the debtor, have made the security available by enforcing its rights as pledgee, and, if necessary for its protection, it could become the owner at the sale and hence a shareholder in the transit company. It would have acquired title in the exercise of a power incidental to the making of the loan. Germania Nat. Bank v. Case, 99 U. S. 628, 25 L. Ed. 448; First Nat. Bank v. Nat. Exchange Bank, 92 U. S. 122, 23 L. Ed. 679. The stock when accepted as payment or in satisfaction of the loan can be subsequently converted into money, although so long as the bank remains a shareholder it is subject to the same liability as the other shareholders. First Nat. Bank v. Hawkins, 174 U. S. 364, 368, 19 Sup. Ct. 739, 43 L. Ed. 1007. But such transactions are obviously distinguishable from the business of buying and selling stocks, as a source of revenue or profit, which would subject the capital contributed by the stockholders to the hazards of specula-

tion, independently of the ordinary risks of banking. The power to engage in such an enterprise, however attractive it may be, is not expressly given by the statute, nor can it be implied as incidental to the business of banking which it was chartered to transact. California Nat. Bank v. Kennedy, 167 U. S. 362, 17 Sup. Ct. 331, 42 L. Ed. 198. It was said in Davis v. Old Colony R. R., 131 Mass. 258, 259 (41 Am. Rep. 221):

"A corporation has power to do such business only as it is authorized by its act of incorporation to do, and no other."

This principle was elaborated in Central Transportation Co. v. Pullman Palace Car Co. 139 U. S. 59, 60, 11 Sup. Ct. 478, 35 L. Ed. 55, and followed as applicable to the contractural powers of national banks in California National Bank v. Kennedy, ubi supra. The plaintiff being chargeable with notice of the defendant's statutory powers, he cannot allege ignorance of the limitation, and where the contract, as in the case at bar, is wholly executory, it is not enforceable either by a suit for specific performance or for damages. Dodge v. Woolsey, 18 How. 331, 15 L. Ed. 401; Nins v. Mt. Hermon Boys' School, 160 Mass. 177, 179, 180, 35 N. E. 776, 22 L. R. A. 364, 39 Am. St. Rep. 467; Eastern Metal Co. v. Webb Granite & Const. Co., 195 Mass. 356, 362, 81 N. E. 251, 11 Ann. Cas. 631. The verdict for the defendant, although directed on other grounds, which need not be considered, having been rightly ordered, it should stand, and judgment thereon is to be entered for the defendant. Jennings v. Puffer, 203 Mass. 534, 89 N. E. 1036.

So ordered.

MAKER OR INDORSER.

Lindsay v. Parrott, Supreme Court of Mississippi, Nov. 23, 1914, 66 So. Rep. 412.

In Mississippi one who signs his name on the back of a promissory note before delivery is liable as a co-maker and not as an indorser; hence he is not entitled to notice of dishonor.

Appeal from the Chancery Court, Leake County; J. F. McCool, Chancellor.

Bill by G. A. Lindsay against Geo. Parrott. Judgment for defendant, and plaintiff appeals. Reversed and remanded.

REED, J. Appellant filed a bill in chancery to foreclose a vendor's lien, retained in a note given to evidence the purchase price of certain land conveyed by him to Green Washington, and to obtain a judgment against Washington and appellee for the balance owing on the note after the credit thereon of the net proceeds from the sale of the land in the foreclosure procedure. Appellant alleges in his bill:

"That said sale was made wholly on a credit and for the sum of $385 due and payable on December 1, 1908, with 10 per cent. interest after

NOTE.—For other similar decisions see Banking Law Journal Digest, § 233.

maturity until paid, which sum of indebtedness is evidenced by the promissory note of Green Washington indorsed by George Parrott."

Then follows a copy of the note, which shows that it was given in payment in full for the land purchased and that the land was subject to a vendor's lien, and further shows that it was signed by Green Washington and indorsed by George Parrott. It is averred in the bill that Washington and Parrott wholly failed to pay the note, or any part thereof except a certain sum, which had been credited thereon.

A demurrer was filed by appellee to the bill, on the ground that the bill failed to show that the note sued on was duly protested for nonpayment and notice thereof given to appellee as required by law. The chancellor sustained the demurrer and dismissed the bill as to Parrott. To show his holding, we quote from the decree as follows:

"That the said George Parrott is not liable on said note as indorser, for the reason that complainant failed to protest said note, and to give the said George Parrott notice of the nonpayment of said note, as he was legally entitled to under the law."

We understand from the averments in the bill that, at the time of the sale of the land and the execution of the deed therefor, the note sued on, duly signed by Green Washington and indorsed by appellee, George Parrott, was delivered to appellant in payment of the purchase price. It appears from the bill that the note was signed and indorsed before delivery. Appellee, by placing his name on the note as indorser thereof before its delivery, became a comaker thereof, and thereby rendered himself liable to the payee as an original promissor. Such being the case, protest of the note and notice of nonpayment was not necessary in order to hold appellee. Polkinghorne v. Hendricks, 61 Miss. 366; Richardson v. Foster, 73 Miss. 12, 18 South. 573, 55 Am. St. Rep. 481; Pearl v. Cortright, 81 Miss. 300, 33 South 72.

Reversed and remanded.

USURY.

Emanuel v. Misicki, New York Supreme Court, Appellate Term, November 19, 1914. 149 N.Y. Supp. 905.

Usury is not a good defense in an action by the holder in due course of a note, against the maker.

Action by Pincus Emanuel against Thomas Misicki and others. From an order setting aside the verdict of a jury and granting a new trial, plaintiff appeals. Reversed, and verdict reinstated.

PER CURIAM. This action was brought to recover the amount due upon a promissory note made by the defendant Misicki, and indorsed by him and the other defendants. It was shown by the plaintiff upon the trial that he was an innocent purchaser of the note for value and

NOTE.—For other similar decisions see Banking Law Journal Digest, § 498.

before maturity. The note in suit was the second renewal given by the defendant Misicki, and the defense was that the note was usurious in its inception.

While the decisions are not in accord upon the question of the availability of such a defense, when urged against a holder of a note in due course (see Klar v. Kostuik et al., 65 Misc. Rep. 109, 119 N. Y. Supp. 683, and Crusins v. Seigman et al., 81 Misc. Rep. 367, 142 N. Y. Supp. 348), we feel bound to follow the Appellate Term decision, and to hold that the refusal of the trial judge to charge the jury, as requested by the plaintiff's attorney, that this defense was not available to the defendant herein as against the plaintiff, was error. Moreover, the court below allowed testimony upon the issue as to the usurious character of the note, and upon this question of fact, the only one raised in the case, the jury found for the plaintiff. The court below gave no reason whatever for setting aside this verdict, and the record disclosed none.

Order reversed, with costs, and verdict reinstated.

DISCHARGE OF SURETY ON NOTE.

Cook v. Sorrells, Supreme Court of Oklahoma, November 17, 1914. 144 Pac. Rep. 347.

Mere delay in the payment of a promissory note will not discharge a surety in the absence of an agreement between the holder and the principal debtor for such delay.

Error from County Court, Jefferson County; R. T. Price, Judge.

Action by Jesse P. Cook against G. W. Sorrells and others. Judgment for defendants, and plaintiff brings error. Reversed and remanded, with directions to ascertain the amount recoverable and render judgment therefor.

TURNER, J. On February 14, 1910, Jesse P. Cook, plaintiff in error, as payee, in the county court of Jefferson county sued Geo. W. Sorrells, as principal, and R. E. Bollinger and W. L. T. Hilton, defendants in error, as sureties, on a promissory note for $359, made, executed, and delivered to said Cook on January 23, 1908, in payment for a span of mules. There was judgment by default against Sorrells. For answer the sureties pleaded that plaintiff, instead of collecting the note when due, for a valuable consideration, agreed with the principal debtor to extend the time of payment several months, by reason of which, they say, they were discharged as sureties upon said note. After issue joined by reply, there was trial to a jury and judgment in favor of the sureties; and plaintiff brings the case here. He assigns that the court erred in failing to direct a verdict in his favor. In refusing so to do, the court erred. The evidence discloses that, some 30 days before the note was due, it was left at the First National Bank of Waurika for pay-

NOTE.—For other similar decisions, see Banking Law Journal Digest, § 475.

ment; that the same was not paid; that after it became due Sorrells attempted to sell Cook certain land belonging to his wife and minor child, with the understanding that the note in controversy was to be received in part payment; that the price of the land was agreed upon, and all parties willing, but that the trade was never made, owing to the fact that Cook could never find time to close it; that, pending negotiations, Sorrells moved out of the county, taking his effects with him, after which the sureties were called upon to pay the note, and, when they refused, this suit was brought. As the evidence nowhere tends to prove an agreement, express or implied, between Cook and Sorrells extending the time of payment, much less a consideration to support it, the judgment must be reversed.

In McLemore v. Powell et al., 12 Wheat. 555, 6 L. Ed. 726, a part of the syllabus reads:

"An agreement between the creditor and principal debtor for delay, or otherwise changing the nature of the contract, to the prejudice of the surety, in order to discharge the latter, must be an agreement having a sufficient consideration, and binding in law upon the parties."

See, also, Kuhlman v. Leavens, Exec., 5 Okl. 566, 50 Pac. 171.

As the note in controversy provides for an attorney's fee, the judgment of the trial court is reversed and remanded, not for a new trial, but with directions to ascertain the amount of the same and render judgment upon the note, including said fee. All the Justices concur.

RIGHTS OF DEPOSITORS ON BANK'S INSOLVENCY

In re Northern Bank of New York, Court of Appeals of New York, October 20, 1914. 106 N. E. Rep. 749.

A city, having funds on deposit in a bank, is not entitled to a preference over other depositors and creditors upon the insolvency of the bank.

Appeal from Supreme Court, Appellate Division, First Department.

In the matter of the Northern Bank of New York. From an order of the Appellate Division (85 Misc. Rep. 594, 148 N. Y. Supp. 70), affirming an order of the special Term denying a motion by the City of New York for the preferential payment of its deposit, the City appeals. Affirmed. See, also, 148 N. Y. Supp. 1133.

Appeal, by permission, from an order of the Appellate Division of the Supreme Court in the first Judicial Department, entered June 5, 1914, which affirmed an order of Special Term denying a motion for an order directing the superintendent of banks of the state of New York to pay the claim of the city of New York against the Northern Bank of New York in full as a preferred claim.

The following questions were certified:

"(1) Upon the facts stated in the moving papers, is the city of

NOTE.—For other similar decisions see Banking Law Journal Digest, § 60.

New York entitled to preference in the payment of the moneys on deposit in the Northern Bank of New York to its credit at the time it was taken charge of by the superintendent of banks for the purpose of liquidation?

"(2) Is the city of New York, in claiming such preference in the payment of such moneys on deposit in the Northern Bank of New York to its credit, barred by the statute of limitations contained in section 19 of the Banking Law (Consol. Laws, c. 2) of the state of New York?

"(3) Is the claim of the city of New York for such general preference barred by the order filed in the Supreme Court on December 6, 1911, affirming the report of the Referee, Ernest Hall, which denied the claim of the city of New York to a priority as to $6,818.24, based solely upon the allegation that such sum had been received by said bank after banking hours with the knowledge of the officers of said bank that it was not in a safe and solvent condition, and had not been entered on the cash book of the city nor upon the books of the bank?"

PER CURIAM. Order affirmed, with costs. First question certified answered in the negative. Second and third questions certified not answered.

WERNER, HISCOCK, CHASE, COLLIN, HOGAN and MILLER, JJ., concur. CARDOZO, J., takes no part.

RIGHT TO SET OFF DEPOSIT AGAINST LIABILITY AS INDORSER.

Curtis v. Davidson, New York Supreme Court, Appellate Division, December 4, 1914. 150 N. Y. Supp 305.

The indorser of notes held by a bank, which matured after the insolvency of the bank, is entitled to set off against his liability as such indorser the amount of his deposit in the bank, at the time of its failure.

Appeal from Special Term, New York County.

Action by Rensselaer L. Curtis, as receiver of the Atlantic National Bank, against Henry Davidson. From an order denying motion for judgment on the pleadings, plaintiff appeals. Affirmed.

MCLAUGHLIN, J. The complaint alleges that on April 16, 1913, the Atlantic National Bank was found to be insolvent and plaintiff appointed receiver of the same; that among its assets, at the time of such appointment, were 19 promissory notes, aggregating $2,600.61, which had been discounted by the bank, and upon which the defendant was indorser; that none of the notes matured prior to the insolvency; that at maturity they were not paid, were duly protested, and notice thereof given to the defendant. The answer does not deny the material allegations of the complaint, but alleges, by way of set-off, that at the time the bank became insolvent, and the plaintiff was appointed receiver, defendant had a deposit therein amounting to $647.66, and he

NOTE.—For other similar decisions see Banking Law Journal Digest, § 61.

asks that the judgment demanded by plaintiff be reduced to that exteut.

The appellant admits that, if the action were against the makers of the notes, they would be entitled to set off their deposit balances in reduction, pro tanto, of the claims asserted against them, but he claims the allowance of such set-off to an indorser, in the absence of an allegation of the makers' insolvency, would result in an unlawful preference in favor of the indorser; in other words, that an indorser should not be allowed to set off his deposit balance against his liability on a note, without alleging and proving the inability of the maker to pay. I have, however, been unable to find any authority which holds that, when the indorser alone is sued, his right to set off a balance standing to his credit when the bank became insolvent is dependent upon his alleging and proving the insolvency of the maker, and I can see no good reason why such set-off should not be allowed. The receiver acquired the assets of the bank subject to all defenses and set-offs which might have been interposed in an action brought by it. Scott v. Armstrong, 146 U. S. 499, 13 Sup. Ct. 148, 36 L. Ed. 1059. Had the bank brought this action, instead of the receiver clearly the defendant would have had a right to offset against the plaintiff's claim whatever deposit balance the bank held standing to his credit. Van Wagoner v. Patterson Co. 23 N. J. Law, 283.

Matter of Middle District Bank, 1 Paige, 585, upon which the appellant chiefly relies has not escaped my attention. That was not an action where an indorser sought to set off his balance, but simply an application for instructions, by the receiver of an insolvent bank, to the chancellor. The instructions given cannot be said to have defined the rights of an indorser in an action by the receiver in which the indorser is made sole defendant.

The bank of which plaintiff is receiver was organized under the National Banking Act, and, in determining whether this would be a proper set-off under that act, the rule prevailing in the federal courts should be followed. Frank v. Mercantile National Bank, 182 N. Y. 264, 74 N. E. 841, 108 Am. St. Rep. 805. The right of a depositor in an insolvent national bank to set off his deposit against the amount of a note upon which he was sued as indorser was settled in Yardley v. Clothier (C. C.) 49 Fed. 337. In that case Butler, J., said:

"We do not consider it important that the defendant's obligation is that of an indorser simply. His undertaking was complete, and his obligation absolute, when he placed his name on the note. Nothing remained for him to do. * * The fact that he might be discharged by act of the maker, or failure to protest and give notice, is unimportant. * * Whatever character, however, may be ascribed to the defendant's obligation, the receiver took it, such as it was, subject to the right of set-off which the defendant then had."

I think the motion for judgment on the pleadings was properly denied. The order appealed from, therefore, should be affirmed, with $10 costs and disbursements. All concur.

THE LAW OF BANKING.

A COURSE OF STUDY IN THE LAW PERTAINING TO BANKS AND BANKING TRANSACTIONS.

BY JOHN EDSON BRADY OF THE NEW YORK BAR.

IV. PAYMENT OF CHECKS (Continued).

§ 118. **Agent's Authority to Indorse** (Continued).

Where an agent is authorized to indorse in a particular form for deposit, his wrongful indorsement in blank and sale of the check does not transfer title to the purchaser; but if the agent is authorized to indorse in blank for deposit, and he wrongfully negotiates the check, one who takes the check in good faith gains good title thereto. Authority on the part of an agent to indorse may be implied from a previous course of dealing by the agent, recognized or sanctioned by his principal.

§ 119. **Right of the True Owner of Check to Recover From Purchaser Where Indorsement Forged.**

One to whom a check is transferred upon a forged indorsement and who collects it is liable for the amount to the real owner of the check, although he received the check in good faith and paid value for it.

§ 120. **Forged Indorsement Where Check Delivered to Impersonator.**

Where one person impersonates another, and by fraudulent means obtains a check payable to the order of the person he represents himself to be, his indorsement of the payee's name upon the check does not constitute a forgery. Consequently the drawee bank which pays such a check may charge the amount thereof against the drawer's account, and the bank which collects such a check and pays over the proceeds to the impersonator does not thereby render itself liable.

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§ 118. **Agent's Authority to Indorse.**—(Continued). When a check is indorsed by an agent in behalf of his principal, the rights of the parties frequently depend upon the authority of the agent to indorse. If the agent has proper authority for that purpose, his indorsement of the principal's name has the same effect as though the indorsement was written by the principal himself. Where, however, the agent indorses a check in his principal's name without authority and negotiates it for his own benefit, his indorsement is a forgery and passes no title to the check.

Most of the cases coming under this section have already been referred to. It has been pointed out that the fact that an agent is authorized to collect money due his principal does not authorize him to indorse checks received in the course of his employment, and that, when an agent wrongfully indorses such a check, the person to whom the check is negotiated is liable to the principal for the agent's misappropriation. It has also been shown that there is a distinction between the case where an agent, authorized to indorse in blank for deposit, wrongfully negotiates a check payable to his principal, and the case where an agent,

authorized to indorse in a particular form for deposit, wrongfully indorses in blank and negotiates a check payable to his principal. In the former case the agent transfers good title to the check when he negotiates it to one who takes it in good faith. In the latter case the agent's indorsement is a forgery and passes no title. In Mills v. Nassau Bank, 52 Misc. Rep. (N. Y.) 243, 102 N. Y. Supp. 1119, it was held that where an attorney, expressly authorized to indorse in blank, checks payable to his client, indorsed certain of his client's checks, deposited them in his personal account, and misappropriated the proceeds, the collecting bank was not liable to the client. In this case the court said, "that the application which the agent made of the funds thus placed to his credit was of no more concern to the bank than would be the disposition of cash which he might have received for the checks under the authority given him."

To be protected in collecting a check indorsed by an agent in his principal's name, the bank need not have actual notice of the agent's authority to indorse at the time of the deposit. It is entitled to the benefit of any facts which inquiries as to his authority would have elicited. Thus, where an agent of a firm indorsed and deposited in his private account, a check payable to the order of the firm, afterwards misappropriating the proceeds, it was held, that the bank was not liable to the firm, it appearing that if inquiry as to the agent's authority had been made, facts would have been disclosed which would have justified the bank in believing that the agent was acting within his authority. Buckley v. Lincoln Trust Co., 72 Misc. Rep. 218, 131 N. Y. Supp. 105.

Authority on the part of an agent may be implied from a previous course of dealing whereby the principal has recognized, or by inaction, affirmed such authority on the part of the agent. Exchange Bank v. Thrower, 116 Ga. 435, 45 S. E. Rep. 316; Jackson Paper Mfg. Co. v. Commercial Nat. Bank, 199 Ill. 151, 65 N. E. Rep. 136; Best v. Krey, 83 Minn. 32, 85 N. W. Rep. 822.

But where a party accepting a check indorsed by an agent maintains that the agent had apparent authority to make such indorsement by reason of previous course of dealing, he must prove that the facts giving color of authority to the agent were known to him. If he had no knowledge of such facts, he could not act in reliance upon them and therefore is not in a position to claim anything by reason of such apparent authority. Jackson Paper Mfg. Co. v. Commercial Nat. Bank, 199 Ill. 151, 65 N. E. 136.

An agent may have implied power to indorse checks in the name of his principal where the authority to indorse is a necessary implication from an express authority conferred upon the agent, and where the duties to be performed by the agent cannot be discharged without the exercise of such power of indorsement. Jackson Paper Mfg. Co. v. Commercial Nat. Bank, 199 Ill. 151, 65 N. E. Rep. 136.

Authority to indorse, however, will not be implied from the fact that an agent is the general manager of the principal's business. Where a general manager, without express authority, indorsed a check payable to the principal and negotiated it to one who collected it from the drawee bank, appropriating the proceeds to his own use, it was held that the drawee bank was liable to the principal. Jackson Paper Mfg. Co. v. Commercial Nat. Bank, 199 Ill. 151, 65 N. E. Rep. 136.

§ 119. **Right of True Owner of Check to Recover from Purchaser Where Indorsement Forged.**—The ordinary purchaser of a check stands in the same position as does the collecting bank, when he receives the check under a forged indorsement; that is to say, a person who receives a check on which the payee's indorsement is forged, though he takes the check without notice of irregularity and gives value therefor, is answerable for the amount of the check in an action by the payee. In an instance of this kind the bookkeeper of the plaintiffs, who were wholesale merchants, forged the indorsements on checks which were payable to the plaintiffs and delivered them for value to the defendant, who thereafter collected them from the banks on which they were drawn. It was held that the defendant was liable in an action by the plaintiffs; the forged indorsements were nullities and the defendant could not successfully resist the title of the true owners of the checks. Meyer v. Rosenheim & Co., 24 Ky. L. R. 2314, 73 S. W. Rep. 1129.

In A. Blum, Jr.'s Sons v. Whipple, 194 Mass. 253, 80 N. E. Rep. 501, the plaintiff, a corporation engaged in the wholesale liquor business, had an agent, who indorsed without authority a check payable to the corporation and persuaded the defendant to cash it. It was held that the defendant was liable to the corporation for the amount of the check.

Where a check, payable to the plaintiff, was stolen from him while he slept, indorsed with his name and negotiated. It was held that the plaintiff could recover the amount from a bona fide purchaser of the check. Warren v. Smith, Utah, 23 Pac. Rep. 1069, and, where an agent having written authority to collect money owing to his principal, but no authority to indorse paper in his principal's name, wrongfully indorsed a check payable to the principal's order and negotiated it in settlement of his private debt, smaller than the amount of the check, taking the creditor's check for the balance which he collected, it was held that the principal could recover from the person to whom the agent negotiated the check. Jacoby v. Payson, 85 Hun (N. Y.) 367.

§ 120. **Forged Indorsement where Check Delivered to Impersonator.**—The general rule in regard to the liability of a bank, which pays a check upon a forgery of the payee's indorsement has previously been expressed. Its effect is that the drawee bank, in such a case, pays at its peril and cannot charge against the account of the drawer the amount of a check, which it has paid. There is an interesting line of

decisions which apparently constitutes an exception to this rule. At least these decisions present an exception to the extent that they hold that the drawee bank is not liable to the drawer, where, under certain circumstances, it has paid a check drawn by a depositor although it appears that the check was not indorsed by the person named as payee in the check, nor by his authority. With slight variations the facts which these decisions involve are as follows: A, an impostor, and usually a stranger in the community, represents that he is B, and in that role obtains by fraud a check from C, payable to B or his order. C, the drawer, is generally aware of the fact there is such a person as B, but does not know him personally. After obtaining the check A wrongfully places B's indorsement upon the check and collects the amount from the bank on which it is drawn. Then the question arises as to whether the drawee bank or the depositor should stand the loss. By the weight of authority it is held that the indorsement of the check by the impersonator, in the name which he has assumed for purposes of fraud in such a case, is not forgery and that the drawee bank is protected in paying. United States v. National Exchange Bank, 45 Fed. Rep. 163; Hoge v. First Nat. Bank, 18, Ill. App. 501, Meridian Nat. Bank v. First Nat. Bank, 7 Ind. App. 322; Meyer v. Indiana Nat. Bank, 27 Ind. App. 354, 61 N. E. Rep. 596; Emporia Nat. Bank v. Shotwell, 35 Kan. 360; Sherman v. Corn Exch. Bank, 91 N. Y. App. Div. 84, 86 N. Y. Supp. 341; McHenry v. Old Citizens' Nat. Bank, Ohio, 97 N. E. Rep. 395. There is no forgery in these cases for the reason that the drawer of the check intends it to be indorsed and negotiated by the person with whom he deals and to whom he delivers the check.

If it appears, however, that the drawer of a check does not deal with the impostor in the full belief that he is dealing with the real person named as payee in the check, but leaves it to the drawee bank to determine whether or not payment is made to the correct party, then indorsement by the impostor is a forgery and the drawee bank is not protected in making such payment. In Dodge v. National Exch. Bank, 30 Ohio St. 1, a goverment certificate of indebtedness payable to F.D. Dodge was stolen and presented by the thief claiming to be Dodge. A check payable to the order of Dodge was delivered to the thief on the assurance that he would identify himself as Dodge at the drawee bank. He succeeded in doing this and collected the check. It was here held that the drawee bank was liable to the payee named in the certificate and check as for having paid the check on a forged indorsement. It could not be claimed in this case that the check was paid to the person to whom the drawer intended it to be paid. The intention was to order payment to Dodge and it was left to the bank to identify the holder of the check as Dodge.

One scheme, which seems to have found popularity among those who prepetrate frauds of this character, is to assume the name of a

person who owns real property in a place distant from the scene of action, and to apply for a loan of money upon the security of the property. If the lender, after satifying himself as to the validity of the security, pays the money to the impersonator in the form of a check, the latter is generally able without great difficulty to identify himself as the payee named in the check and collect thereon. This device was resorted to in the case of Meyer v. Indiana Nat. Bank, 27 Ind. App. 354, 61 N. E. Rep. 596, where the court, in holding that the drawee bank was not responsible to the drawers for the amount of the check, which it paid upon an indorsement by the impersonator, said: "The person to whom appellants (drawers) ordered their funds to be paid was the one to whom they were paid. They were deceived as to his true name. They were mistaken as to his ownership of property and character. He obtained the check by gross fraud, but he had the right to payment as between himself and the bank, it having no notice of or part in the fraud, or the transaction in which it was practiced."

In Robertson v. Coleman, 141 Mass. 201, it was said: "The name of a person is the verbal designation by which he is known, but the visible presence of a person affords surer means of identifying him than his name. The defendant, for a valuable consideration, gave the check to a person who said his name was Charles Barney, and whose name they believed to be Charles Barney, thereby intending the person to whom they gave the check."

As expressed in Meridian Nat. Bank v. First Nat. Bank, 7 Ind. App. 322 where one who had stolen certain cattle, assumed the name of W. C. Smith, and sold the cattle, receiving therefor a check payable to the order of W. C. Smith, which he indorsed and collected: "The check was received by the identical person or individual to whom its drawer intended to deliver it, and was by that person indorsed in the name in which it was issued to him. Even the drawer did not have in mind as the payee any other or different individual."

The disbursing agent for the executor of an estate held a distributive share for one Peter W. Burbaker. He ent red into correspondence with an impostor at Lincoln, Neb., signing himself Peter W. Burbaker, in belief that he was the person entitled to the money and finally purchased a bank draft, payable to Peter W. Burbaker and mailed it to the impostor at Lincoln, Neb. The defendant bank purchased the draft, on indorsement by the latter as Peter W. Burbaker and collected it. It was held that the purchasing bank acquired good title to the draft and was not accountable for the proceeds to the disbursing agent who indorsed it to Burbaker. Hoffman v. American Exch. Bank, 2 Neb. (Unoff.) 217, 222, 96 N. W. Rep. 112.

These decisions also apply the rule that, where one of two innocent persons must suffer loss by the fraud or misconduct of a third person, he who first reposes the confidence and commits the first oversight must bear the loss, and hold that, under this rule, the drawer of a check delivered

to an impersonator is estopped by his own lack of caution to demand payment of the drawee bank, when the latter has paid out the drawer's money on the impersonator's indorsement. McHenry v. Old Citizens' Nat. Bank, Ohio, 97 N. E. Rep. 395.

In a case of United States v. National Exch. Bank, 45 Fed. Rep. 163, where a post office official delivered a check to one who presented an order for money, and succeeded in passing himself off as the payee named in the order, the court in holding that the drawee bank was not liable to the United States for the amount of the check which it subsequently paid, after having the holder satisfactorily identified, said: "Allowing the drawer and drawee to be equally innocent, the loss should fall upon that one who, by his act, has been the occasion of the loss."

The fact that the imposition is accomplished by correspondence and that the drawer of the check does not meet the perpetrator of the fraud face to face does not remove the case from the application of the principles above set forth. In one such instance the executor of an estate received letters purporting to be written by a legatee named in the will. As a matter of fact the legatee, who, it seems, was the sister of the executor, was dead, although the executor was ignorant of this fact, and the letters were written by her husband. In the letters a payment of the legacy was demanded and the executor purchased a draft from the defendant bank, payable to the order of the legatee, which he forwarded in a letter addressed to the legatee. The husband forged her indorsement and obtained the money. It was held that the executor was not entitled, under these circumstances, to recover from the defendant bank. States v. First Nat. Bank, 17 Pa. Super. Ct.256. In the opinion it was said: "It is to be observed that the case before us is not that of a lost check or draft upon which payment has been secured on a forged indorsement. The draft in this case was forwarded by the plaintiff to one who was impersonating the plaintiff's dead sister. It was an imposition perpetrated by correspondence. The plaintiff, in fact dealt with the husband of the deceased, Rebecca Vincent. To the husband the draft was sent by the plaintiff. By the impersonator, or by his direction, the draft was indorsed with the name of Rebecca Vincent. The payment was thus made to the identical person to whom the draft was sent by the plaintiff. The loss to the plaintiff in this case is the result of the deception practised upon him. To allow him now to recover from the bank would be to shift the responsibility for failing to discover the deception, from the plaintiff to the bank from whom he bought the draft; to throw upon the bank the risk of an antecedent fraud practiced upon the purchaser of the draft of which the bank had neither knowledge nor means of knowledge."

In the case of Emporia National Bank v. Shotwell, 35 Kan. 360, a person assumed the name of another party who owned certain land and applied to the plaintiff by letter for a loan, offering the land as se-

curity. The plaintiff purchased a draft upon the defendant bank, payable to the order of the person in whose name the application was made, and forwarded it. The draft was subsequently paid upon an indorsement by the impersonator and it was held that the drawee bank was not liable to the plaintiff. It has also been held in a case, involving similar facts, except that the application was made by a person who actually bore the same name as the person he represented himself to be, that, where the lender forwarded a draft, which was collected by the impersonator, the drawee bank was not liable to the lender. Hodge v. First Nat. Bank, 18 Ill. App. 501.

Under the rule that, where a person draws his check and delivers it to an impostor, believing him to be the payee named in the check, the indorsement of the check by such impostor does not constitute a forgery, it is held that a drawee bank, having paid a check under such circumstances to a bank which innocently handled the check for collection, cannot recover the money thus paid. Land Title & Trust Co. v. Northwestern Nat. Bank, 196 Pa. 230, 46 Atl. Rep. 420.

These authorities, however, have been criticized by at least one court. The Supreme Court of Rhode Island expresses itself in the following language: "These cases lose sight of the distinction between real and fictitious persons. In the latter case there is nobody to inquire about; no one, in fact, misrepresented; no one in the mind of one party other than the person with whom he is dealing. In the case of a real person, however, one party, having him in mind, satisfies himself about the responsibility of such party and supposes that he is dealing, not with the person who is in fact before him, but with the one whom he has in mind and whom the one before him falsely personates." Tolman v. American Nat. Bank, 22 R. I. 462, 48 Atl. Rep. 480.

In the Rhode Island case referred to it appeared that one Potter, representing himself to be Haskell, applied to Tolman for a loan, giving Haskell's residence and occupation as his own. Tolman, after making inquiries, gave Potter a check payable to the order of Haskell, which Potter indorsed and cashed. In holding that the drawee bank was liable to Tolman, the drawer, the court relied upon the Negotiable Instruments Law, and stated in the opinion: "The signature in this case is clearly one 'made without the authority of the person whose signature it purports to be,' and, therefore, it is 'wholly inoperative.' This being so, the defendant cannot justify its action under it, there being no evidence of any conduct by the plaintiff to mislead the defendant and so estop his present claim. As the case stood, the plaintiff had ordered the money paid to Haskell. The bank had not so paid it. The fact that the plaintiff had been imposed upon did not relieve the bank from its duty to see that the money was paid according to order." The Negotiable Instruments Law (Sec. 42 of the New York Act) provides that "where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly in-

operative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority."

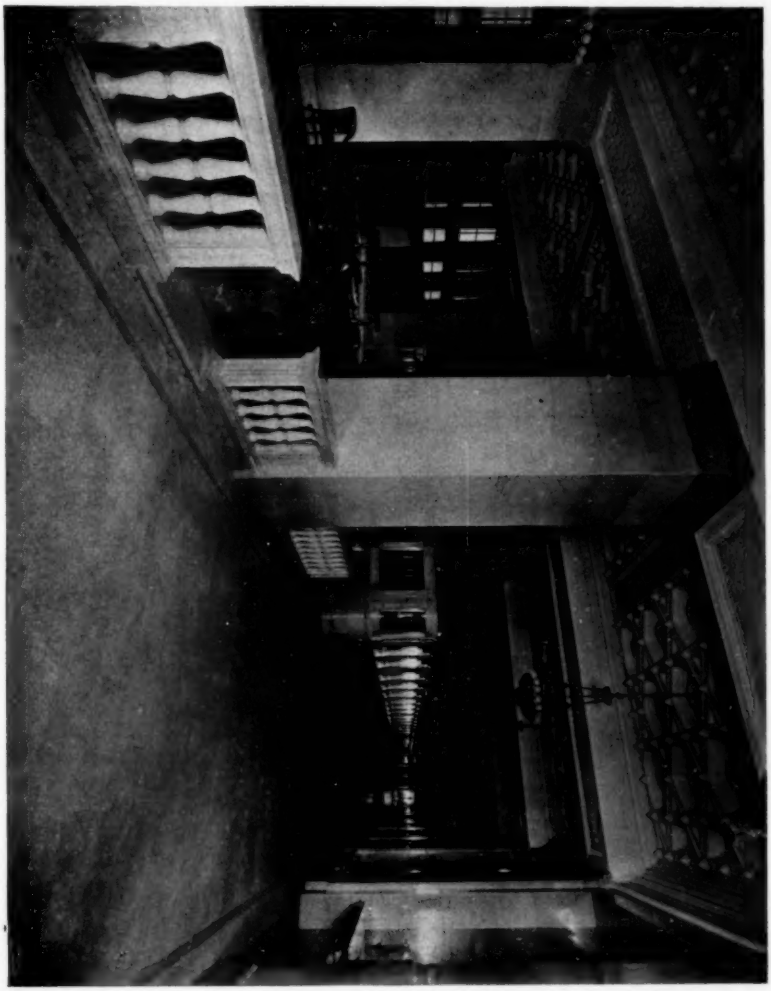
The general rule as to checks wrongfully indorsed by impostors, referred to in the preceding section, does not apply where the impostor, instead of claiming to be another individual, merely assumes to be the agent of some one else, whom he does not in fact represent. While, in delivering a check to such a person, the drawer may be considered as vouching for him as the agent of the payee, he does not vouch for his right or authority to indorse the payee's name. In these cases the check is made payable to one person and delivered to another for the payee. The drawer has no illusions in regard to the person with whom he deals except upon the point of his authority to act as agent. He does not believe that he is making his check payable to the person to whom he delivers it, nor that it is to be indorsed and negotiated by that person. And inasmuch as the person to whom the check is delivered has no authority to act for the payee his indorsement is a forgery. The payment of the check by the drawee bank is unauthorized and it must make good the amount of the check to the drawer under the general rule as to payments upon forged indorsements. Russell v. First Nat. Bank, Ala., 56 So. Rep, 868; Atlanta Nat. Bank v. Burke, 81 Ga. 597, 7 S. E. Rep. 738; Murphy v. Metropolitan Nat. Bank, 191 Mass. 159, 77 N. E. Rep. 693.

It would seem that cases of this kind might be proper ones in which to apply the rule that, where one of two innocent persons must suffer a loss, the loss should be thrown upon that one who has, by his act, occasioned the loss. The drawer of the check has an opportunity before delivering the check to investigate the agency of the individual with whom he deals, and a reasonable investigation would, in most instances, lead to a disclosure of facts which would cause the drawer to withhold his check and prevent the perpetration of the fraud. The bank, on the other hand, is unaware of the circumstances under which the check was given and has neither reason nor opportunity for looking into the matter of whether or not the indorsement of the payee's name is genuine. Probably the best answer to this contention is that the authorities, almost without exception, hold that the drawee bank which pays a check under such circumstances is responsible for the amount to the drawer.

(*To be Continued.*)

NEW HOME OF THE CHASE NATIONAL BANK, NEW YORK.

The Chase National Bank is now fully settled in its new home, the Adams Building, 57 Broadway, having removed on January 9th from the Clearing House Building, 83 Cedar St., where it has been located for nineteen years. The bank occupies the entire first floor and basement.



MAIN BANKING ROOM.

There are banks and banking houses of all kinds and descriptions; but it is doubtful if any equal, certainly none excel the Chase's present quarters. President Wiggin in speaking of the advantages of the new home said they represented the last word in banking facilities. The banking room proper is 200 feet long and extends from Broadway through to Trinity Place, and is 75 feet wide from the corridor of the Adams Building to Exchange Place. This gives daylight on three sides of the room and besides there is a light well in the center.

The entrance on Broadway is of carved marble. A pair of bronze doors admits to

a vestibule of bronze and by passing through another set of bronze doors admission is gained to the main banking room. The walls, piers and ceilings are all of Italian marble and the floors are of French marble, with borders of light and dark Botticino. Just inside the main intrance one is confronted with a large, marble bust of Salmon P. Chase, who was Abraham Lincoln's Secretary of the Treasury, and after whom the bank is named. The bust is placed upon a plain marble pedestal.

On the right is an entrance from the corridor of the Adams Building through heavy bronze doors, and over this entrance is a large clock in a carved marble case. On the left of the entrance is the officers' platform, which is furnished with mahogany of a special design. The private offices of the chairman of the board, president and all the other officers are in the rear of this platform, being partitioned off with a heavy mahogany screen. The windows of the officers' rooms face on Trinity Place and are of opalescent glass. Extending from this platform to the extreme rear is the banking screen

DIRECTORS' ROOM.

proper, wherein the various departments are located. The bookkeepers are located along the Trinity Place end of the room. Thirty ornamental chandeliers, each with a cluster of sixteen lights, furnish the artificial light, and the desks are also fitted with portable lights of special design. The heating radiators are enclosed in marble frames with bronze grills.

The directors' room which is located in the basement is the most artistic part of the bank. In the center of the room is the directors' table, 18 feet long, and in one corner is the master clock of the ten synchronized ones in different parts of the bank. Adjoining this room is the officers' dining room, a private dining room, the clerks' dining room, the kitchen and lockers. The rest of the basement is devoted to the bookkeeping, mailing, checking and other departments.

The great securities vault is also located in the basement. It is 18 feet wide, 43 feet deep and 8 feet 8 inches high, It is of the latest type of construction and the lining is built up to a thickness of 3 inches of solid steel composed of alternate lay-

ers of open hearth and 5-ply steel. The entrances to the vault are located at the opposite ends, the outside doors being 15 inches thick and the inner doors 5 inches thick, while the vestibule walls are correspondingly heavy. The doors are also insulated with plates of a non-burnable metal which will resist the action of the oxyacetylene cutting burner usually used by safe blowers. The vault is surrounded with concrete walls 16 inches thick reinforced with steel rails. The steel weight of the vault is 560 tons and the weight of each entrance is 25 tons.

The history of the Chase National Bank dates from September, 1877, when it opened for business at 117 Broadway where it remained until May, 1887. It then removed to the old Clearing House Building, 15 Nassau street, where it stayed until December, 1895, when it moved to the present Clearing House Building, 83 Cedar street, where it remained until it has located in its new quarters in the Adams Building, being the fourth removal since its organization.

OFFICERS' QUARTERS.

The Chase National Bank, as before stated, was organized in 1877 by John Thompson and his son, Samuel G. Tbompson. Mr. Thompson, at that time, was owner and publisher of what was then known as Thompson's Bank Note Reporter, a weekly publication, very necessary in the days of the old state banks and which was regarded as an authority on banking matters. He subsequently disposed of the publication and the name was afterwards changed to the American Banker. Being an old-time, personal friend of Secretary Chase he took the opportunity of giving his name to the bank which has since become one of the leading financial institutions in this country. Some years after the bank was founded Mr. Thompson and associates parted with their interest. The new organization made Henry W. Cannon president, who held the position for a number of years when he retired in favor of A. Barton Hepburn, who in turn resigned to become chairman of the board of directors. Hc was succeeded by A. H. Wiggin who is president at the present time. Mr. Wiggin, the active head of the Chase, is one of the best known and most influential men in the financial world today. He is chair-

man of the Clearing House Committee, chairman of the Gold Fund Committee and has taken a prominent part in the Cotton Fund movement.

The Chase, when first organized, had only $300,000 capital. In 1887 the capital was increased to $500,000, the book value of the stock then being 180. In 1897 the capital was again increased to $1,000,000 and a cash dividend of $500,000 was paid at the time. In 1906 the capital was increased to $5,000,000 at which it stands today, and a cash dividend of 400 per cent. was declared. In addition to this the Chase has a surplus of $5,000,000 and undivided profits of $4,172,275. According to the statement of December 31, published on another page of this issue of the JOURNAL the deposits are nearly $134,000,000 and resources $157,000,000.

The officers of the Chase are: A. Barton Hepburn, chairman; Albert H. Wiggin, president; Samuel H. Miller and Edward R. Tinker, Jr., vice-presidents; Henry M. Conkey, cashier; Charles C. Slade, Edwin A. Lee, William E. Purdy, Alfred C. Andrews, Charles D. Smith and William P. Holly, assistant cashiers.

FIRST NATIONAL BANK, ROCHESTER, MINNESOTA.

This bank, which was organized and began business in 1874, celebrated its fiftieth anniversary on December 1, 1914. The founder and first president of the institution was John R. Cook, a successful merchant, who came from Indiana and located in Rochester in 1856. Besides his regular business he dealt in exchange, made loans and performed other functions of a bank until 1864, when the needs of a regularly organized bank became so apparent that he and four others organized what is now the First National Bank of Rochester, with a capital of $50,000, and John R. Cook as its president. One month after opening its deposits amounted to $18,000. In 1870 its capital was increased to $100,000.

In 1881 Mrs. Frances S Cook was elected president to fill the vacancy caused by her husband's death, holding office until 1883, when she was succeeded by her son, John R. Cook, Jr., who held the position up to 1908 when he retired and was succeeded by the present president, A. C. Gooding, the bank having had only four presidents during its fifty years' existence. The bank has prospered from the very first day it opened, its statement on December 1, 1914 showing: Capital, $100,000; surplus and profits, $112,900; deposits, $1,263,302 and resources $1,515,000.

"AND WHO WAS CROESUS"?

That is the title of another one of the series of those inimitable financial booklets issued from time to time by the First National Bank of Boston. Everybody would like to be as rich as Croesus was reputed to be; but it is doubtful if many, whether business men or financiers, could offhand answer the above question without consulting Rollin, Tooke, or some other authority or else vigorously rubbing up the mythological memories of schoolboy days. But the First National has, in charming style, retold the old story and given a new insight into the inner life of the famous Lydian monarch who ascended the throne in 560 B. C.

Incidentally there is a brief reference to Midas, the Phrygian king, who asked of Bacchus that whatever he touched might be turned to gold. But when even the food he wished to eat turned into gold he was told that the fatal power could only be taken away by bathing in the river Pactolus, which flowed by Sardis, the capital city of Lydia, and in so doing its sands were turned into gold. This may be said to be the starting point of the great wealth which afterwards made Croesus famous. Cyrus the Great who eventually conquered Croesus, is also referred to.

The little book is a valuable addition to the series and should be in every library. A copy can be obtained by applying to the First National of Boston.

INQUIRIES AND CORRESPONDENCE

This department places at your service able legal talent and experts on banking and financial matters. Inquiries from our subscribers are answered free. Name and address is published unless otherwise requested.

CONDUCTED BY JOHN EDSON BRADY OF THE NEW YORK BAR.

CAUTION.

In submitting a question it is essential that all of the facts involved be clearly set forth. If the question relates to a check, bill of exchange, note, or other negotiable instrument, or to any paper or document, a copy should be sent, also copies of letters having reference to the transaction out of which the question arises.

CHECK PAYABLE TO ORDER OR BEARER.

Editor Banking Law Journal. ——, ILLINOIS December 22, 1914.

DEAR SIR:—We enclose sample check drawn in favor of J. H. True or order or bearer for $8.40. We would like to know if this check can be considered either an order or a bearer check by the bank or party that cashed same?

——, Ill., ...*Dec. 22*...., 191 . *No.* ..

FIRST NATIONAL BANK.

Pay to.....*John H. True*.....or { ORDER / BEARER } ....*$8.40*..

.....*Eight dollars forty cents*.....DOLLARS

For .....

Copy. .....*W. F. True*.....

Does the fact that the drawer failed to cross out either "order or bearer" indicate that the drawer had no preference in this matter, and that the bank or party cashing same could consider it either an order or bearer check?

Yours respectfully, W. L. WILLIAMS.

Answer.—We do not find any decision construing a check similar in form to the one above. The Negotiable Instruments Law provides that an instrument to be negotiable must be "payable to order or to bearer." If an instrument were made payable to "John Jones, or order or bearer," it would undoubtedly be construed as being payable to bearer. In the case of Phoenix Nat. Bank v. Saucier, Miss., 59 So.

Rep. 91, which was published in the September 1912 issue of the BANKING LAW JOURNAL at page 767, it was held that a promissory note payable "to the order of J. C. Crouch & Son, or bearer," was negotiable and should be construed as being payable to bearer, and was transferable by delivery without the payee's indorsement. This case was decided by the Supreme Court of Mississippi, in which state the Negotiable Instruments Law was not in force, but there is no reason for believing that a different construction would be given to such a note if the question had arisen in a state which had adopted the uniform statute. Where an instrument is made payable to "John Jones, or order or bearer," the words "or order" are superfluous and the instrument is in effect payable to "John Jones or bearer." But in the check above set forth the words "order" and "bearer" being printed one on top of the other, it is at once apparent that the check is not complete in form until the word "order" or the word "bearer" is marked out. If neither is marked out the instrument is, to say the least, ambiguous. It would seem, however, that when a check is issued in the form of the check above the holder should be entitled to treat it as an instrument payable to bearer. This, however, is merely an opinion and is not backed up by any decided case. It is conceivable that the court might hold that since the drawer of the check has failed to designate whether it is to be payable to order or bearer, effect should be given to neither of those words and the instrument might be regarded as nonnegotiable for want of words of negotiability; or, in such case, the court might admit parol evidence as to the intention of the drawer in issuing his check in this manner.

It is suggested that, if a bank wishes to have its blank checks printed in such form that the drawers may make their checks payable to order or bearer, it should have the following words printed on a single line at the end of the space intended for the payee's name, "or order, or bearer." The drawer of a check can then make it payable to order or to bearer as he sees fit by striking out the proper words. If, through an oversight, he should neglect to strike out any of the words, his check would then be payable to "John Jones, or order or bearer," and in accordance with the decision referred to above, his check would be construed as being payable to bearer. A check made out in this form would be free from the ambiguity which attaches to a check in the form of the one submitted with this inquiry and printed above.

INDORSEMENT OF CHECK BY OFFICER OF CORPORATION.

Editor Banking Law Journal. ——, MICHIGAN, October 19, 1914.

DEAR SIR:—As a subscriber to your JOURNAL I would ask your opinion on the following:

A check comes to us payable to a certain land company and is indorsed by John Doe, secretary, without any further reference as to what he is secretary of,

though we know that he is secretary for the land company. We feel that it would be a sufficient indorsement, but clearing house banks require us to guarantee it. Does any advice with regard to such an indorsement appear in the Negotiable Instruments Law? Thanking you for advice on this I am,

Very truly yours, SUBSCRIBER.

Answer:—A check payable to a corporation may be indorsed by any agent whom the corporation authorizes to act in its behalf in such matters. This is a matter upon which a bank should have an explicit understanding with its corporate depositors. It is customary for a corporation to designate some particular agent who is authorized to indorse checks for it and to notify the bank of such action. A bank runs no risk in allowing an officer of a corporation to indorse checks payable to the corporation for deposit provided they are deposited to the credit of the corporation. A bank should, however, under no circumstances allow such a check to be deposited to the credit of the officer, or of any person other than the corporation; nor should the bank pay over the cash on such a check to the officer indorsing and presenting it without assuring itself of his authority to indorse. No officer of a corporation has inherent authority to indorse for negotiation checks payable to the corporation. If he indorses such a check without authority his indorsement is a forgery, and if a bank cashed a check under such circumstances it would be liable in an action by any subsequent holder or by the payee.

RIGHTS OF BANK PAYING CHECK BEARING FORGED SIGNATURE.

Editor Banking Law Journal. ——, NEW YORK, January 15, 1915.

DEAR SIR:—Will you kindly answer the following query? If a bank takes a book and check on another bank for collection without knowing the person who presents the book or signs the check, and without knowing that the signature is genuine, and sends the book and check directly to the bank on which it is drawn, simply indorsing it over to the bank on which it is drawn without otherwise guaranteeing the signature, will the collecting bank be liable if the check is paid but afterward proves to be a forged signature? Would it make any difference if there was no book; and how much difference would it make if the check was indorsed "without recourse?" Yours very truly, TREASURER.

Answer:—The form of the indorsement is not a factor in determining the rights of the parties in the case above presented. An indorsement "without recourse" merely means that the indorser assumes no responsibility in case the check is not paid upon presentment, because of want of funds or because payment has been stopped, or for some similar reason. The indorser without recourse warrants the genuineness of the instrument just as though he had indorsed it in blank. It should be mentioned that one who transfers a check by mere delivery without indorsement, also warrants its genuineness; but it is held that one who indorses a check or transfers it without indorsement does not warrant the genuineness of the drawer's signature to

the drawee. The reason for this is, that the drawee is bound to know the drawer's signature. This being the law, the question of indorsement does not enter into the transaction but the question resolves itself into one as to the rights of the drawee bank to recover money it has paid on a check bearing a forged signature.

Under the rule that a drawee bank is bound to know its drawer's signature, it is held by the weight of authority, that a bank which pays a check drawn upon it is bound by such payment to the extent that it cannot recover back the money paid, upon subsequently discovering that the signature on the check was a forgery. The courts, however, are breaking away from this hard and fast rule and showing a tendency to permit the drawee bank to recover the money it has paid on a forged check under certain conditions. Thus it is held in some cases, that a drawee bank will be allowed to recover the money paid on a forged check, if the party from whom the recovery is sought is not thereby prejudiced. If, for instance, the A bank cashes a check on the B bank and, after the check is paid by the B bank, it is discovered that the drawer's signature is a forgery, these cases permit recovery by the drawee bank. The A bank is not prejudiced by allowing recovery in such a case. It had paid out the amount of the check at the time of presenting it to the drawee bank, and allowing the drawee bank to recover back the money paid by it, places the A bank in no worse position than if the forgery had been discovered upon presentment and payment refused. There is a line of cases to the effect that, a bank which takes a check from a stranger is bound to make reasonable inquiry to satisfy itself that everything is regular. If the bank which cashes a check, neglects to make inquiry into the identity of the stranger, and, after it has collected the check, it is discovered that the signature was forged, the drawee bank will be permitted to recover under this line of authorities.

In the case of Newberry Savings Bank v. Bank of Columbia, S. C., 74 S. E. Rep. 615, a man, who represented himself to be R. L. Crooks, and who had in his possession a pass book issued by the plaintiff bank to R. L. Crooks, went into the defendant bank, to the officers of which he was unknown, and asked to have his check on the plaintiff bank cashed. The cashier of defendant bank called up the plaintiff bank on telephone and asked if R. L. Crooks' check would be good. Upon receiving an affirmative answer the defendant bank cashed the check, without making any inquiry into the identity of the party with whom it was dealing. The fact that the check was forged was not discovered for more than a year after this transaction. The plaintiff then made a demand on the defendant bank for a return of the money and, upon being refused, brought this action. It was held that the circumstances justified a recovery by the plaintiff bank. The following is quoted from the opinion: "The case then comes to this: Does the person who has himself taken the check in his own favor, and who himself presents

it and demands payment of the bank on which it is drawn, represent to the bank that the signature is genuine, and is he responsible if it turns out that the signature is not genuine, and that he took no precautions to identify the person who signed it? The person or bank to whom the money is paid, in such circumstances, receives the money of another on the faith of an untrue representation that he has dealt with and received the check from the person whose name is signed to it. The rule that a bank should know the signatures of its customers is not available to one who represents to the bank that he holds in his hand the check of the customer without having taken precautions to ascertain the identity of the person with whom he was dealing."

It cannot, of course, be stated just what steps a bank should take when a person, who is a stranger to it, asks it to cash a check drawn on another bank. The prevailing rule certainly requires that the bank take some steps to assure itself that the transaction is not tainted with fraud. The fact that the check is presented by a stranger without credentials is sufficient to put the bank upon inquiry and it owes a duty to the drawee bank to act in a prudent and business-like manner and to make such inquiries and investigations as the circumstances require. The most natural course for the bank to pursue in such a case would be to insist that the holder of the check bring in some person known to the bank to vouch for him. Such action on the part of a bank has been held to protect it from liability, where it turns out afterward that the signature is not genuine. It has been held that a bank, which cashed a draft on another bank for one who was introduced by a reputable person, was not guilty of negligence in failing to make further inquiry as to the identity of the party presenting the draft, and was not liable to the drawee upon its being discovered, after the payment of the draft by the drawee, that the signature was a forgery. Moody v. First Nat. Bank, 19 Tex. Civ. App. 278.

There are, however, cases which hold that the fact that a bank receives a check from a stranger and does not communicate that fact to the drawee bank is not sufficient to render it liable to the drawee if it is discovered after payment that the check is a forgery. There is a decision to this effect in the State of New York, viz; Salt Springs Bank v. Syracuse Savings Institution, 62 Barb. 101. In this case it was said: "The defendant owed the plaintiff no duty, imposed by custom or otherwise, to inquire into the genuineness of the check. It had the right to take the risk of advancing money upon it if it was forged, or if, for any other reason, the bank was justified in refusing to pay it. The plaintiff's counter was the proper place at which to ascertain whether the check was genuine. If the plaintiff's officers and clerks omitted to exercise the care and caution they would have used had the check been presented by some other institution or person, it has its agents to blame and not the defendant."

The decisions above referred to are cited and discussed more in

detail in the September, 1914, issue of the BANKING LAW JOURNAL at pages 695-699.

Even in those jurisdictions where the decisions do not place upon a bank, cashing a check for a stranger, the duty of inquiring into his identity and the genuineness of the check and impose no obligation to disclose the facts to the drawee, it is well for the bank cashing the check to take every reasonable precaution. Unless the bank is satisfied that the transaction is regular, it should refuse to pay any money on the check until the same has been collected, and should acquaint the drawee bank with the circumstances under which the check was received.

While the possession of a pass book by the person presenting the check is evidence that he is the person he represents himself to be, it is not conclusive. In the South Carolina case referred to above, it appeared that the stranger had a pass book in his possession, but it was held that the bank which cashed the check without making inquiry as to his identity was, nevertheless, liable to the drawee bank. To sum up briefly, it seems to be the law in New York that a bank may cash a check for a stranger without inquiry and place the entire responsibility of detecting a forged signature upon the drawee bank. The bank should remember, however, that there is nothing so uncertain as the outcome of an action for damages and for its own protection it should, as suggested above, take every reasonable precaution.

This answer deals only with the payment of a check on which the drawer's signature is a forgery and has no application to a case involving the payment of a check bearing a forged indorsement.

THE BROADWAY TRUST COMPANY ABSORBS ANOTHER BANK.

It is announced by Frederic G. Lee, president, that the Broadway Trust Company of New York has taken over the Commercial National Bank of Long Island City. The Commercial National was opened in February, 1913. In its statement of December 31, 1914, just published, the resources were placed at $1,000,000 and deposits at $590,000.

The banking offices of the Commercial, on the Queensboro Bridge Plaza, Long Island City, will be continued as the Long Island City offices of the trust company. Three of the former directors of the bank, Martin G. Metzner, of Long Island City; Horace Havemeyer of Brooklyn, and George G. Meyer of Elmhurst were elected directors of the Broadway Trust.

Among the directors of the Broadway Trust Company are John H. Flagler, Charles E. Finlay, W. O. Jones, vice-president of the National Park Bank; Lewis E. Pierson, president of the Austin-Nichols Company; Theodore F. Whitmarsh, of the FrancisH. Leggett Company; Elbridge G. Snow, president of the Home Insurance Company, and F. W. Woolworth.

By absorbing the Commercial National the Broadway Trust Company gains membership in the Federal Reserve Bank of the New York district.

PRODUCTION OF GOLD AND SILVER IN THE UNITED STATES IN 1914.

From the "Press Bulletin" for January, issued by the director of the United States Geological Survey, the following interesting information is taken. It appears that the output of both metals was unusually large and but for the European war all records would have been broken.

ASE IN GOLD MINING.

The gold-mining industry of the United States had a prosperous year in 1914 and regained its normal condition, inasmuch as early returns indicate an output greater by nearly $4,000,000 than that of 1913. Mr. H. D. McCaskey, of the U. S. Geological Survey, who is authority for these figures, adds that the production in 1913 was lower than for several years past and even in 1914 the output was considerably below that of any year in the period 1908 1912, when the high water mark was reached. For 1914 the preliminary figures of the United States Geological Survey and the Bureau of the Mint indicate a total gold yield of $92,823,500.

In Alaska the output of gold increased about $300,000, the industry was generally prosperous, and a large amount of dead work continued to be done preparatory to increased output from lode mines. The placer yield was about $10,700,000, or the same as in 1913, and increases made in the Ruby, Seward Peninsula, Iditarod, and Hot Springs districts offset declines in output from Fairbanks and other camps. Abundant rainfall favored placer mining.

In Arizona the mine production of gold increased about $500,000 in 1914.

In California the mines produced over $700,000 more than in 1913. The Grass Valley, Mother Lode and other quartz mines continued active producers at depth, and the placer output, especially from the large dredging operations was again large.

Colorado mines increased their yield by over $1,500,000 above that of 1913, the greater part of this increase, or $1,143,000, being made in the Cripple Creek district, where the mines and mills had another active year. Lake County (chiefly Leadville) made an important increase in gold output also.

In Idaho the mine output decreased over $250,000 owing largely to the small output of the De Lemar mine, but the dredges in Lemhi and Boise counties had a prosperous year.

In Montana the mine yield increased over 14 per cent and the total production was above $4,000,000, or more than for any year since 1906.

Nevada mines show a decrease of about 4 per cent. or over $400,000, in gold output in 1914. The yield at the great Goldfield camp alone declined by over $1,000,000.

In New Mexico the mine production increased nearly $300,000, but in Oregon the output declined about $20,000.

In south Dakota the mine output was normal. The great Homestake mines and mills were operated through the year, treating a slightly increased tonnage of slightly lower grade.

In Utah the mine output of gold decreased about 7 per cent, or over $250,000, in 1914. The yield was principally from copper ores. The output from true gold ores has declined since the suspension of operations at Mercur.

The Philippine production has steadily increased and in 1914 passed the $1,000,000 mark.

California again retains first rank in gold production in 1914, followed in order by Colorado, Alaska, Nevada, and South Dakota, as in 1913. Arizona and Montana have both passed Utah, however, which dropped to eighth place in 1914. As stated in the Geological Survey Press Bulletin one year ago, increased output of gold on any large scale is hardly to be expected from any of the states from the present outlook, and unless the great low-grade deposits of the Juneau district, in Alaska, now being prepared

for large yield, step into the breach, or new discoveries are made elsewhere, the future domestic gold yield may show further decline from the high figures of recent years.

According to estimates from the records of the Bureau of Foreign and Domestic Commerce, the imports in 1914 comprised gold valued at $58,122,000 and the exports were valued at $242,711,000. The excess of exports over imports was therefore about $184,589,000, against an excess of $28,093,778 in 1913.

HEAVY SILVER PRODUCTION—ANOTHER LARGE OUTPUT FOR 1914.

The domestic production of silver again reached a high mark in 1914. The preliminary estimates of the United States Geological Survey and the Bureau of the Mint indicate an output of 67,929,700 fine ounces, valued at $37,225,000, but the final figures may be somewhat lower. This was again one of the greatest outputs since the domestic production of silver began, according to H. D. McCaskey of the United States Geological Survey. In 1912, 1913, and 1914 the highest record outputs of quantity have been made, but, owing to the varying yearly average prices for the metal, the value of the output has frequently in the last 25 years exceeded the value of any one recent year.

Increases in mine production of silver were notable in Idaho, California and Arizona in 1914, and large decreases were recorded in Montana, Utah, Nevada, and Colorado.

Nevada retained first place in output of silver in 1914, but early figures from the mines indicate a decrease in production of over 800,000 ounces.

Idaho ranked second in silver production in 1914, with an increase in production of about 3,000,000 ounces making a record for the State.

In Montana the silver output fell off more than 1,500,000 ounces, owing chiefly to the curtailed copper yield resulting mainly from the European war but also in part from labor conditions at Butte.

Utah ranked fourth in output, but the yield declined. The bulk of the silver produced was derived from silver-bearing lead ores of the Tintic district.

Colorado ranked fifth in silver production, with a decrease of over 400,000 ounces, and Arizona ranked sixth, with an increase of about the same quantity and a record output.

Low metal prices and disorganized markets in the latter part of 1914 especially, and curtailment of copper output owing to the European war, made the year a difficult one for producers of silver. But for the increased yield of siliceous silver ores at Tonopah and in Arizona and the silver-lead-zinc ores especially at Butte and in the Coeur d'Alenes, the silver yield would have been greatly decreased.

Demand for silver from India and China was disappointingly light in 1914, and London stocks accumulated, resulting in poor market. New York prices, reflecting these condition, were generally low, especially in the latter half of the year.

The imports of silver in 1914 were valued at $25,331,000, as estimated from the records of the Bureau of Domestic and Foreign Commerce. The exports were valued at $50,500,000, or $25,169,000 in excess of the imports. In 1913 the excess of exports over imports was $26,908,812.

The imports of silver in 1914 were, as usual, chiefly in ore and bullion and mainly from Mexico, which supplied $14,186,000 in silver, and Canada, which supplied $5,657,000.

PROMOTION OF NEW YORK CHAPTER MAN.

E. G. McWilliam, who for the last three years has been secretary of the Savings Bank Section of the American Bankers Association, has resigned to accept the position of manager of the publicity department of the Security Trust & Savings Bank of Los Angeles, Cal.

Mr. McWilliam is a savings bank man of long experience in New York City, a graduate of the American Institute of Banking and at present chairman of the Committee on Public Affairs of that organization. He was president of New York Chapter A. I. B. in 1912.

AN AUTHORITY TELLS BANKS HOW TO GET NEW BUSINESS.

At a recent meeting of the New York State Safe Deposit Association Fred W. Ellsworth, publicity manager of the Guaranty Trust Company, addressed the members on "Getting Business by Advertising." Under the general headings of Necessity and Means Employed, the speaker stated that: "Every business man realizes the necessity of getting new business and that the best means is by personal work. In banks and trust companies this is accomplished by officers, directors and employees. The next best substitute is the individually signed letter. The possibilities of the personal letter being limited, we are naturally brought to a consideration of advertising as the best substitute."

Under the heading of Good and Bad Advertising the speaker stated that: "Bad advertising includes the old-fashioned card which merely announces name and location, calendars, programs, novelties, etc."

"Good advertising includes that which talks directly to the prospect by means of newspaper and other periodicals or by booklets. In newspaper advertising consideration should be given to dress or appearance, message or copy and location or position in paper. The advertisement to achieve its purpose must first attract, then awaken interest, then convince, then excite to action. The best dress for a newspaper advertisement is to have the title and the signature of the institution in display type with the 'story' in plain newspaper type between the two display lines. The entire type matter should be surrounded by a frame of white enclosed in a simple rule. The story should be brief and as a rule must emphasize but one point at a time. The best results are probably obtained from what is known as timely advertising such as recently enacted laws, new inheritance tax law, war tax law, etc."

In conclusion Mr. Ellsworth stated: "Better results could no doubt be obtained from advertising if put out on the community basis and paid for pro rata by all interested institutions." Some communities have successfully carried out this plan and that he believed would prove successful if tried in New York City.

O. Howard Wolfe, president of New York Chapter A. I. B., on December 16 finished his lecture tours on "Changes Under the Federal Reserve Act." He addressed Chapters of the Institute in many of the principal cities and in every case was received cordially and with enthusiasm. He stated among other things that: "One thing which the new Federal Reserve Act will effect is a system of better banking. The banker will look not only to the value of the security but he will look closely to the purpose of the loan. He will become a scientifically trained banker." He also thinks that "the new system under the Federal Reserve Act calls for close examination of loans and discounts of a bank, as well as a comparison of them with the loans and discounts in every other bank which will prevent one or more loans on the same security. For the first time in the history of our country elasticity has been given to our currency, as well as an efficient means provided for the collection of checks."

BOOK NOTICES.

THE FINANCIER'S A. B. A. EDITION.

Among the many valuable weekly financial publications which find their way to the JOURNAL sanctum none is more acceptable or readable than "The Financier." Alert, newsy and always abreast in matters financial, it furnishes just what the busy banker wants to know. Not the least useful is its extra edition published annually, giving a verbatim report of the proceedings of the American Bankers Association convention. In an extra edition of nearly 200 pages the "Financier" gives a complete account of all that was done at the convention held in Richmond last October. It is embellished with portraits of many of the leading bankers in the United States and Canada. It also carries a goodly number of advertisements which are handsomely printed on tinted paper the whole making a useful addition to the banker's library. The publishers are to be congratulated on turning out such an admirable convention edition.

NEW YORK CHAPTER A. I. B. NOTES.

On the evening of December 16th E. D. Fisher, Deputy Comptroller of New York City, led the discussion of the Chapter Forum on "Note Issues Under the Federal Reserve Act."

Victor A. Lersner, a past president of New York Chapter and at present a member of its board of governors, bas been promoted to the position of Comptroller of the Williamsburgh Savings Bank of Brooklyn. The same institution announces the promotion of Henry R. Kinsey to the office of assistant cashier.

George G. Milne, Jr., of the Trust Department of the Lincoln Trust Company, New York City, has conceived the idea of a "Travelling Library" for banks and trust companies. This scheme of circulating books is one of the privileges of the New York Public Library, and under the arrangement several books on given subjects are secured for a stated time. The introduction of a plan in the Lincoln Trust Company met with a hearty reception.

BURROUGHS ADDING MACHINE COMPANY.

E. A. WALTON, APPOINTED ADVERTISING MANAGER.

Edwin A. Walton succeeds E. St. Elmo Lewis as advertising manager of the Burroughs Adding Machine Company of Detroit, Mich. For the past three years Mr. Walton has been connected, in the same capacity, with the Timken Companies. In one sense this is a "return engagement," for about three years ago he resigned as assistant advertising manager of the Burroughs to become advertising manager of the Timken, since which time he is credited with having conducted one of the most successful advertising campaigns in the history of the motor car industry.

Mr. Walton has the faculty of writing common sense, human interest advertisements which not ouly appeal to but hold the attention of the reader, He is a believer of truth in advertising and a great admirer of originality in any line of work. He is well known in advertising circles, being at the present time a director in the association of national advertisers. He assumed his new work with the Burroughs on January first.

FEDERAL RESERVE DISTRICT NO. 8.

ITS RESOURCES AND CHIEF PRODUCTS.

This district ranks sixth in populations, ninth in area, tenth in capital, and comprises one entire state, Arkansas, and a part of six others, namely: Missouri, Illinois, Indiana, Kentucky, Tennessee and Mississippi. It covers an area of 146,474 square miles, contains a population of 6,726,611 and has a length from north to south of 544 miles and breadth of 535 miles from east to west.

The Mercantile Trust Company and the Mercantile National Bank of St. Louis have compiled and issued a booklet of 56 pages, which contains a map showing the United States and the twelve reserve districts on one side and the eighth district on the other, giving also the physical and commercial resources of the district. It is the first work of the kind that has been issued up to this writing.

It gives in detail the population of each county and county seat together with its chief productions and commercial resources; number of banks in each county with capital, surplus and profits and deposits; railroad mileage; average time by rail from St. Louis to county seat and by what route mails are dispatched. It certainly is a work of great interest and value; not alone to residents of the district but to business men and bankers in all sections of the country. It contains information that could not be obtained elsewhere without consuming a great deal of time and labor.

Festus J. Wade, president of the Mercantile Trust Company, has sent out letters to every bank in the district relative to this booklet. Mr. Wade is deserving of great credit for his enterprise in supplying the bankers of the 8th district with such a valuable addition to the banking literature of the day.

THE INVESTMENT SITUATION.

Knauth, Nachod & Kuhne in their letter of January 15, say in part:

"Within the last few days London exchange has declined to the lowest level touched since the beginning of the panic of 1907. This movement has been most remarkable and reflects conditions which show that nearly all the foreign exchanges are now moving in favor of the United States. It has been coincident with a fall in call money rates to the lowest figure touched in many months—an extraordinary phenomenon, since sterling exchange ordinarily advances when money declines—and suggests that before very long we may be able to import quite a considerable amount of gold.

"These developments show conclusively, first, that the foreign exchange situation has not only righted itself, but that it has developed in a way which will probably give us temporary command of Europe's gold, and, second, that relatively easy rates for money are assured for a considerable period.

"There has not been any overwhelming foreign selling of securities at New York, and the situation, as a whole, is much more satisfactory than has been the case at any time since the European war became the overshadowing influence in the markets of the world. What securities have been sold back here, for the account of foreign investors, have been readily absorbed and although there has not been important buying of stocks by the public at large, there has been within the last few days a very definite enlargement of the investment inquiry. Since the war began the Wall Street bankers have been asked to advance fully $300,000,000 to various foreign governments through the purchase of short-term and long term securities. But the vast majority of these applications have been rejected because the bankers had so many applications from their own clients to provide for. The movement as a whole has been altogether unprecedented and shows that the New York market is beimg asked to finance many of the foreign government loans, that in ordinary times are placed with the London bankers."

A DESIRABLE INVESTMENT.

N. W. Halsey & Company of 49 Wall street, N. Y. City have purchased $1,500,000 6% Gold Coupon Notes of the United Light and Railways Company. The proceeds of these notes will be used to complete payments on properties heretofore acquired and reimburse the treasury of the company for inprovements to subsidiary properties.

The United Light & Railways Company was organized in July, 1910, and now owns or controls through ownership of all or a very large majority of the outstanding capital stock, fourteen public service companies operating in the states of Illinois, Iowa, Indiana, Michigan and Tennessee. The properties owned or controlled are engaged in the manufacture and sale of gas and electricity for light, heat and power, and in street and interurban railway operation. The companies serve 53 communities, having a combined popnlation, according to the 1910 U. S. Census, of 466,441. The present population is estimated at 537,617.

HENRY W. YATES.

Henry W. Yates, who died recently at his home in Omaha, Neb., was one of the best known bankers in the Central West. He was president of the Nebraska National Bank ol Omaha, and was a recognized authority on banking questions, so much so that Secretary MeAdoo is said to have asked his opinion on certain points in the new currency law. He was one of the old school bankers and conservative to such a degree that he would wait for business to come to his bank rather than go after it. He was the choice of Nebraska and Wyoming bankers for member of the Federal Reserve Board, but did not care for the position. Readers of the JOURNAL will recall many articles written by Mr. Yates which have appeared from time to time in its columns.

THE UNION NATIONAL BANK OF CLEVELAND.

The Union National Bank of Cleveland, gives the following interesing account of how the details were arranged for moving, from its old home, to the location it will occupy during the construction of its new building:

The problem of moving the business of a bank, employing over seventy clerks, and with assets of $18,000,000, from one location to another at the conclusion of one day's business, and having everything arranged to prosecute the next day's business without interruption or inconvenience to the bank's customers, was one presenting many difficulties. The program for moving The Union National Bank to its temporary quarters in the Williamson Building, was sketched out on paper as early as the first week in December last. Several committees were formed to take care of all particular features of the moving problem. In addition, a so-called Board of Strategy, named from among the men, met twice a week to consider ways and means and solve the different problems which came up at intervals. In addition, the officers of the bank met once a week to receive reports and to check the progress of the arrangements being made. So well had the plans been matured that promptly with the closing of the tellers' windows on Saturday, (the moving day), the contractor who had charge of the moving took hold and everything was then transferred to the new home in an orderly manner.

IMPORTANT MERGER.

On January 14, final details were arranged which resulted in the absorption of the Mutual Alliance Trust Company, by the Chatham & Phenix National Bank of New York. The trust company had about $8,000,000 deposits which were taken over by the Chatham & Phenix, increasing the deposits of the latter to $32,000,000. Five years ago the bank's deposits were only $7,000,000.

The trust company had two branches both of which have been turned over to the Century Bank. It is understood that James H. Parker, who was president of the Mutual Alliance Trust Company, and W. O. Allison will be made directors of the Chatham & Phenix, and that Frank V. Baldwin, vice-president of the trust company will hold a similar position in the merged institutions.

THE MARSHALL & ILSLEY BANK, MILWAUKEE, WIS.

At the annual election on January 12, John Campbell was elected president to succeed James K. Ilsley, who resigned on account of ill health. Mr. Campbell has been connected with the bank in various capacities for nearly forty years, having entered the bank's service at the age of seventeen. He has been vice-president for several years. The other officers are: John A. Puelicher, vice-president and cashier; C. A. Reuss, vice-president; F. X. Bodden, H. J. Paine, H. J. Dreher and John E. Jones, assistant cashiers.

THE IRVING NATIONAL BANK'S RECEPTION ROOM.

A bankers reception room has recently been put in commission by the Irving National Bank of New York. It is intended for the use of visiting bankers who may come to the metropolis at any time, and they will find the room fitted up with all modern facilities for telephoning, correspondence, etc. President Grant wishes every one of the bank's customers and friends to feel free to use the room and make themselves at home when in the city. The Irving always has an eye open for the benefit of its friends and patrons.

RESERVE AGENTS APPROVED IN DECEMBER.

The following banks were approved as Reserve Agents in December:

Hanover National Bank, New York, for City Nat. Bank, Fort Smith, Ark., Continental Nat. Bank, Los Angeles, Cal., Peoples Nat. Bank, Chester, S. C.

Chase National Bank, New York, for First Nat. Bank, Linton, N.D., National Bank of South Carolina, Sumter, S. C., Whitney-Central Nat. Bank, New Orleans, La., Wall Nat. Bank, Worden, Ill.

Mechanics & Metals National Bank, New York, for Oklahoma Stockyards Nat. Bank, Oklahoma City, Okla., First Nat. Bank, Dickson, Tenn., First National Bank, Gloucester, Va., First Nat. Bank, East Peoria, Ill.

Liberty National Bank, New York, for Gloucester Nat. Bank, Gloucester, Mass.

National Park Bank, New York, for National Bank of South Carolina, Sumter, S. C., First Nat. Bank, Atwater, Minn., Ada Nat. Bank, Ada, Minn.

Citizens Central National Bank, New York, for Planters' Nat. Bank, Richmond, Va.

Irving National Bank, New York, for Empire Nat. Bank, Clarksburg, W. Va., First Nat. Bank, Bay City, Mich.

Seaboard National Bank, New York, for Central Nat. Bank, San Angelo, Tex.

Continental & Commercial Nat. Bank, Chicago, for First Nat. Bank, Weed, Cali., First Nat. Bank, Durango, Colo., First Nat. Bank, Alpha, Mich.

Fort Dearborn National Bank, Chicago, for Peoples Nat. Bank, Charleston, S.C., National Bank of Ionia, Ionia, Mich.

Corn Exchange National Bank, Chicago, for National Bank of Syracuse, Syracuse, N. Y.

Franklin National Bank, Philadelphia, for First & City Nat. Bank, Lexington, Kentucky.

Philadelphia National Bank, Philadelphia, for Central-State Nat. Bank, Memphis, Tenn.; County Nat. Bank, Clearfield, Pa.

Third National Bank, St. Louis, for Holland Nat. Bank, Holland, Ind., Henderson Nat. Bank, Henderson., Ky., First Nat. Bank, Mayfield, Ky.

First National Bank, Cleveland, for Peoples Nat. Bank, Steubenville, Ohio; Phoenix & Third Nat. Bank, Lexington, Ky.

THE BANKS OF LOS ANGELES, CALIFORNIA.

The official statement of the banks in Los Angeles, California, as of January 1, is replete with interest. The thirty-two banks reporting show deposits of $164,181,669; loans and investments $152,595,000; capital $15,097,202; surplus and profits $12,256,334 and total resources of $199,332,000. The total dividend paid stockholders during the past year was $1,850,052 and interest paid savings depositors $2,907,780. The clearings for 1914 aggregate $1,145,167,110 as compared with $811,387,487 in 1910. The post office business was $2,197,756 and total harbor imports $5,049,879. The estimated population of Los Angeles on January 1, is 545,000.

The Security Trust & Savings Bank, the oldest and largest savings bank in the Southwest, reports as follows on January 1; capital $1,800,000; surplus and profits $1,911,446 and $38,632,520 due 89,434 depositors. In passing it may be noted that E. G. Mc William, former secretary of the Savings Bank Section of the A. B. A., has been made manager of the publicity department of this bank, having resigned his former position. The Security National Bank, which is affiliated with the Security Trust & Savings also makes a fine showing with $2,912,513 deposits; capital $300,000; surplus and profits $235,231 and total resources $3,563,545. This bank is thoroughly equipped to handle all business connected with commercial banking and solicits the accounts of banks, firms and corporations.

COMPARATIVE NEW YORK BANK STATEMENT.

The following table shows the loans and deposits of the associated banks, reported to the New York Clearing House for the weeks ending January 17, 1914, and January 16, 1915, respectively.

BANK.	*Loans and Discounts Average, 1914.*	*Loans and Discounts Average, 1915.*	*Legal Net Deposits Average, 1914.*	*Legal Net Deposits Average, 1915.*	*Deposits. Per Cent. of* Inc.	Dec.
Members of Federal Reserve Bank.						
Bank of N. Y. N. B. A...	$21,974,000	$27,279,000	$20,351,000	$24,822,000	21.9	....
Merchants' National.....	19,436,000	23,653,000	19,393,000	21,782,000	12.3	....
Mechanics & Metals Nat..	52,015,000	84,841,000	48,495,000	79,701,000	64.3	....
National City	180,013,000	220,683,000	170,969,000	239,733,000	40.2	....
Chemical National.....	30,881,000	31,865,000	28,113,000	27,050,000	....	3.7
Merchants' Exch. National	6,611,000	8,693,000	6,659,000	7,668,000	15.1	....
Nat. Butchers & Drovers..	1,872,000	1,921,000	2,032,000	1,951,000	....	3.9
American Exchange Nat.	44,516,000	54,838,000	44,503,000	52,899,000	18.8	....
Nat. Bank of Commerce..	130,950,000	139,344,000	112,430,000	126,854,000	12.8	....
Chatham & Phenix Nat...	19,126,000	23,743,000	19,461,000	22,571,000	15.9	....
Hanover National.....	72,427,000	82,629,000	84,795,000	85,945,000	1.3	....
Citizen's Central National	23,680,000	23,089,000	23,257,000	21,969,000	....	5.5
Market & Fulton Nat. ...	8,846,000	8,447,000	9,086,000	8,443,000	....	7.
Importers & Traders Nat.	27,402,000	27,638,000	26,408,000	24,067,000	....	8.8
National Park.....	87,709,000	101,347,000	91,462,000	95,083,000	3.9	....
East River National.....	1,331,000	1,754,000	1,757,000	1,962,000	11.6	....
Second National.....	14,407,000	15,679,000	13,550,000	13,581,000	.2	....
First National	104,126,000	119,479,000	98,000,000	109,218,000	11.4	....
Irving National.....	38,732,000	47,710,000	39,896,000	49,878,000	25.	....
N. Y. County National...	8,505,000	10,357,000	8,972,000	8,686,000	....	3.2
Chase National	90,715,000	111,676,000	110,642,000	126,820,000	14.6	....
Lincoln National	15,339,000	14,256,000	16,028,000	16,138,000	.6	....
Garfield National	9,620,000	8,171,000	10,399,000	8,743,000	....	15.9
Fifth National	3,823,000	4,280,000	3,802,000	4,130,000	8.6	....
Seaboard National	24,170,000	22,894,000	29,040,000	26,920,000	....	7.3
Liberty National	22,557,000	24,398,000	26,447,000	26,825,000	1.4	....
Coal & Iron Nat'l Bank ..	6,122,000	6,639,000	6,080,000	6,205,000	2.	....
Union Exchange Nat.. ...	9,503,000	10,041,000	9,534,000	9,741,000	2.1	....
Nassau Nat. Bank, Bklyn.	7,753,000	7,698,000	6,539,000	6,554,000	....	....
State Banks Not Members of Federal Reserve Bank.						
Bank of the Manhattan Co.	29,070,000	37,060,000	32,600,000	46,600,000	42.9	....
Bank of America.....	25,619,000	29,864,000	48,495,000	29,979,000	18.8	....
Greenwich.....	9,358,000	9,743,000	10,514,000	10,495,000	....	.1
Pacific.....	4,962,000	5,115,000	4,830,000	5,015,000	3.8	....
People's.....	1,984,000	1,998,000	2,295,000	2,470,000	7.6	....
Metropolitan Bank.....	13,044,000	13,006,000	13,548,000	11,786,000	....	13.
Corn Exchange	55,293,000	70,419,000	65,873,000	78,766,000	19.5	....
Bowery.....	3,234,000	3,675,000	3,443,000	3,187,000	....	7.4
German-American.....	3,993,000	4,406,000	3,818,000	4,330,000	13.4	....
Fifth Avenue.....	13,652,000	14,481,000	15,403,000	15,933,000	3.4	....
German Exchange	3,171,000	3,414,000	3,726,000	3,334,000	....	10.
Germania	5,033,000	5,772,000	5,727,000	5,956,000	3.9	....
Bank of the Metropolis...	13,261,000	12,642,000	13,361,000	12,667,000	....	5.1
West Side Bank	3,826,000	4,325,000	4,549,000	4,150,000	....	8.7
N. Y. Produce Exchange.	8,816,000	10,148,000	10,181,000	11,022,000	8.2	....
State Bank	19,235,000	17,543,000	24,819,000	19,268,000	....	22.3
Security Bank	11,511,000	10,465,000	13,858,000	12,369,000	....	10.6
Totals	$1,340,599,000	$1,519,118,000	$1,341,869,000	$1,533,257,000		